Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

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
2003–04 First Extraordinary Session
2003–04 Second Extraordinary Session
2003–04 Third Extraordinary Session
2003–04 Fourth Extraordinary Session
2003–04 Fifth Extraordinary Session

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CHAPTER 472

An act to add Section 65302.1 to the Government Code, relating to local planning.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 65302.1 is added to the Government Code, to read:

65302.1. (a) The Legislature finds and declares all of the following:

(1) The San Joaquin Valley has a serious air pollution problem that will take the cooperation of land use and transportation planning agencies, transit operators, the development community, the San Joaquin Valley Air Pollution Control District and the public to solve. The solution to the problem requires changes in the way we have traditionally built our communities and constructed the transportation systems. It involves a fundamental shift in priorities from emphasis on mobility for the occupants of private automobiles to a multimodal system that more efficiently uses scarce resources. It requires a change in attitude from the public to support development patterns and transportation systems different from the status quo.

(2) In 2003 the district published a document entitled, Air Quality Guidelines for General Plans. This report is a comprehensive guidance document and resource for cities and counties to use to include air quality in their general plans. It includes goals, policies, and programs that when adopted in a general plan will reduce vehicle trips and miles traveled and improve air quality.

(3) Air quality guidelines are recommended strategies that do, when it is feasible, all of the following:

(A) Determine and mitigate project level and cumulative air quality impacts under the California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Integrate land use plans, transportation plans, and air quality plans.

(C) Plan land uses in ways that support a multimodal transportation system.

(D) Local action to support programs that reduce congestion and vehicle trips.

(E) Plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources.

(F) Reduce particulate matter emissions from sources under local jurisdiction.

(G) Support district and public utility programs to reduce emissions from energy consumption and area sources.

(4) The benefits of including air quality concerns within local general plans include, but are not limited to, all of the following:

(A) Lower infrastructure costs.

(B) Lower public service costs.

(C) More efficient transit service.

(D) Lower costs for comprehensive planning.

(E) Streamlining of the permit process.

(F) Improved mobility for the elderly and children.

(b) The legislative body of each city and county within the jurisdictional boundaries of the district shall amend the appropriate elements of its general plan, which may include, but are not limited to, the required elements dealing with land use, circulation, housing, conservation, and open space, to include data and analysis, goals, policies, and objectives, and feasible implementation strategies to improve air quality.

(c) The adoption of air quality amendments to a general plan to comply with the requirements of subdivision (d) shall include all of the following:

(1) A report describing local air quality conditions including air quality monitoring data, emission inventories, lists of significant source categories, attainment status and designations, and applicable state and federal air quality plans and transportation plans.

(2) A summary of local, district, state, and federal policies, programs, and regulations that may improve air quality in the city or county.

(3) A comprehensive set of goals, policies, and objectives that may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a).

(4) A set of feasible implementation measures designed to carry out those goals, policies, and objectives.

(d) At least 45 days prior to the adoption of air quality amendments to a general plan pursuant to this section, each city and county shall send a copy of its draft document to the district. The district may review the draft amendments to determine whether they may improve air quality consistent with the strategies listed in paragraph (3) of subdivision (a). Within 30 days of receiving the draft amendments, the district shall send any comments and advice to the city or county. The legislative body of the city or county shall consider the district's comments and advice prior to the final adoption of air quality amendments to the general plan. If the district's comments and advice are not available by the time scheduled for the final adoption of air quality amendments to the general plan, the

legislative body of the city or county may act without them. The district's comments shall be advisory to the city or county.

(e) The legislative body of each city and county within the jurisdictional boundaries of the district shall comply with this section no later than one year from the date specified in Section 65588 for the next revision of its housing element that occurs after January 1, 2004.

(f) As used in this section, ''district'' means the San Joaquin Valley Air Pollution Control District.

SEC. 2. Nothing in this act shall be interpreted to expand the application of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the existing authorities of the affected local governments, or of the San Joaquin Valley Air Pollution Control District.

SEC. 3. The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 473

An act to amend Sections 25102, 25212, 25230, 25232, 25241, 25247, 25252, 25532, 25540, 25541, and 25612.5 of, and to add Sections 25256, 25404, and 25612.3 to, the Corporations Code, and to amend Sections 12221, 17209.3, 22109, and 23001 of, and to add Sections 12307.5, 17424, and 22705.1 to, the Financial Code, relating to financial institutions.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 25102 of the Corporations Code is amended to read:

25102. The following transactions are exempted from the provisions of Section 25110:

(a) Any offer (but not a sale) not involving any public offering and the execution and delivery of any agreement for the sale of securities pursuant to the offer if (1) the agreement contains substantially the following provision: ''The sale of the securities that are the subject of this agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the qualification is unlawful, unless the sale of securities is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code. The rights of all parties to this agreement are expressly conditioned upon the qualification being obtained, unless the sale is so exempt''; and (2) no part of the purchase price is paid or received and none of the securities are issued until the sale of the securities is qualified under this law unless the sale of securities is exempt from the qualification by this section, Section 25100, or 25105.

(b) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified, if no stop order or refusal order is in effect and no public proceeding or examination looking towards an order is pending under Section 8 of the act and no order under Section 25140 or subdivision (a) of Section 25143 is in effect under this law.

(c) Any offer (but not a sale) and the execution and delivery of any agreement for the sale of securities pursuant to the offer as may be permitted by the commissioner upon application. Any negotiating permit under this subdivision shall be conditioned to the effect that none of the securities may be issued and none of the consideration therefor may be received or accepted until the sale of the securities is qualified under this law.

(d) Any transaction or agreement between the issuer and an underwriter or among underwriters if the sale of the securities is qualified, or exempt from qualification, at the time of distribution thereof in this state, if any.

(e) Any offer or sale of any evidence of indebtedness, whether secured or unsecured, and any guarantee thereof, in a transaction not involving any public offering.

(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:

(1) Sales of the security are not made to more than 35 persons, including persons not in this state.

(2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or

controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement. The number of purchasers referred to above is exclusive of any described in subdivision (i), any officer, director, or affiliate of the issuer, or manager (as appointed or elected by the members) if the issuer is a limited liability company, and any other purchaser who the commissioner designates by rule. For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person. The commissioner may by rule require the issuer to file a notice of transactions under this subdivision.

The failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice as provided by rule of the commissioner shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110.

(g) Any offer or sale of conditional sale agreements, equipment trust certificates, or certificates of interest or participation therein or partial assignments thereof, covering the purchase of railroad rolling stock or equipment or the purchase of motor vehicles, aircraft, or parts thereof, in a transaction not involving any public offering.

(h) Any offer or sale of voting common stock by a corporation incorporated in any state if, immediately after the proposed sale and issuance, there will be only one class of stock of the corporation outstanding that is owned beneficially by no more than 35 persons, provided all of the following requirements have been met:

(1) The offer and sale of the stock is not accompanied by the publication of any advertisement, and no selling expenses have been given, paid, or incurred in connection therewith.

(2) The consideration to be received by the issuer for the stock to be issued consists of any of the following:

(A) Only assets (which may include cash) of an existing business enterprise transferred to the issuer upon its initial organization, of which all of the persons who are to receive the stock to be issued pursuant to this exemption were owners during, and the enterprise was operated for, a period of not less than one year immediately preceding the proposed issuance, and the ownership of the enterprise immediately prior to the proposed issuance was in the same proportions as the shares of stock are to be issued.

(B) Only cash or cancellation of indebtedness for money borrowed, or both, upon the initial organization of the issuer, provided all of the stock is issued for the same price per share.

(C) Only cash, provided the sale is approved in writing by each of the existing shareholders and the purchaser or purchasers are existing shareholders.

(D) In a case where after the proposed issuance there will be only one owner of the stock of the issuer, only any legal consideration.

(3) No promotional consideration has been given, paid, or incurred in connection with the issuance. Promotional consideration means any consideration paid directly or indirectly to a person who, acting alone or in conjunction with one or more other persons, takes the initiative in founding and organizing the business or enterprise of an issuer for services rendered in connection with the founding or organizing.

(4) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, is filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer. That notice shall contain an opinion of the member of the State Bar of California that the exemption provided by this subdivision is available for the offer and sale of the securities. The failure to file the notice as required by this subdivision and the rules of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice within the time specified by this subdivision shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. The notice, except when filed on behalf of a California corporation, shall be accompanied by an irrevocable consent, in the form that the commissioner by rule prescribes, appointing the commissioner or his or her successor in office to be the issuer's

attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against it or its successor that arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the issuer. An issuer on whose behalf a consent has been filed in connection with a previous qualification or exemption from qualification under this law (or application for a permit under any prior law if the application or notice under this law states that the consent is still effective) need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (A) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at its last address on file with the commissioner, and (B) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the further time as the court allows.

(5) Each purchaser represents that the purchaser is purchasing for the purchaser's own account, or a trust account if the purchaser is a trustee, and not with a view to or for sale in connection with any distribution of the stock.

For the purposes of this subdivision, all securities held by a husband and wife, whether or not jointly, shall be considered to be owned by one person, and all securities held by a corporation that has issued stock pursuant to this exemption shall be considered to be held by the shareholders to whom it has issued the stock.

All stock issued by a corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session that required the issuer to have stamped or printed prominently on the face of the stock certificate a legend in a form prescribed by rule of the commissioner restricting transfer of the stock in a manner provided for by that rule shall not be subject to the transfer restriction legend requirement and, by operation of law, the corporation is authorized to remove that transfer restriction legend from the certificates of those shares of stock issued by the corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session.

(i) Any offer or sale (1) to a bank, savings and loan association, trust company, insurance company, investment company registered under the Investment Company Act of 1940, pension or profit-sharing trust (other than a pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or individual retirement account), or other institutional investor or governmental agency or instrumentality that the

commissioner may designate by rule, whether the purchaser is acting for itself or as trustee, or (2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of the corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer, provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if either of the following apply:

(1) All of the purchasers meet one of the following requirements:

(A) Are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged).

(B) Are persons described in paragraph (1) of subdivision (i).

(C) Have been found by the commissioner upon written application to be substantially engaged in the business of drilling for, producing, or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded).

(2) The security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank, provided that each purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the security.

(k) Any offer or sale of any security under, or pursuant to, a plan of reorganization under Chapter 11 of the federal bankruptcy law that has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

(*l*) Any offer or sale of an option, warrant, put, call, or straddle, and any guarantee of any of these securities, by a person who is not the issuer of the security subject to the right, if the transaction, had it involved an offer or sale of the security subject to the right by the person, would not have violated Section 25110 or 25130.

(m) Any offer or sale of a stock to a pension, profit-sharing, stock bonus, or employee stock ownership plan, provided that (1) the plan meets the requirements for qualification under Section 401 of the Internal Revenue Code, and (2) the employees are not required or permitted individually to make any contributions to the plan. The exemption provided by this subdivision shall not be affected by whether the stock is contributed to the plan, purchased from the issuer with contributions by the issuer or an affiliate of the issuer, or purchased from

the issuer with funds borrowed from the issuer, an affiliate of the issuer, or any other lender.

(n) Any offer or sale of any security in a transaction, other than an offer or sale of a security in a rollup transaction, that meets all of the following criteria:

(1) The issuer is (A) a California corporation or foreign corporation that, at the time of the filing of the notice required under this subdivision, is subject to Section 2115, or (B) any other form of business entity, including without limitation a partnership or trust organized under the laws of this state. The exemption provided by this subdivision is not available to a ''blind pool'' issuer, as that term is defined by the commissioner, or to an investment company subject to the Investment Company Act of 1940.

(2) Sales of securities are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons who are qualified purchasers.

(D) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, each with total assets in excess of five million dollars ($5,000,000) according to its most recent audited financial statements.

(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder thereof to at least the same voting rights as the issuer's one class of voting common stock, provided that the issuer has only one-class voting common stock outstanding upon consummation of the offer and sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of two hundred fifty thousand dollars ($250,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars ($100,000) and reasonably expects gross income in excess of one hundred thousand dollars ($100,000) during the current tax year or (ii) has a minimum net

worth of five hundred thousand dollars ($500,000). ''Net worth'' shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subparagraph, of that natural person.

(F) Any other purchaser designated as qualified by rule of the commissioner.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.

(4) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities are sold to, or a commitment to purchase is accepted from, the purchaser, a written offering disclosure statement that shall meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), and any other information as may be prescribed by rule of the commissioner, provided that the issuer shall not be obligated pursuant to this paragraph to provide this disclosure statement to a natural person qualified under Section 260.102.13 of Title 10 of the California Code of Regulations. The offer or sale of securities pursuant to a disclosure statement required by this paragraph that is in violation of Section 25401, or that fails to meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not render unavailable to the issuer the claim of an exemption from Section 25110 afforded by this subdivision. This paragraph does not impose, directly or indirectly, any additional disclosure obligation with respect to any other exemption from qualification available under any other provision of this section.

(5) (A) A general announcement of proposed offering may be published by written document only, provided that the general announcement of proposed offering sets forth the following required information:

(i) The name of the issuer of the securities.

(ii) The full title of the security to be issued.

(iii) The anticipated suitability standards for prospective purchasers.

(iv) A statement that (I) no money or other consideration is being solicited or will be accepted, (II) an indication of interest made by a prospective purchaser involves no obligation or commitment of any kind, and, if the issuer is required by paragraph (4) to deliver a disclosure statement to prospective purchasers, (III) no sales will be made or commitment to purchase accepted until five business days after delivery of a disclosure statement and subscription information to the prospective purchaser in accordance with the requirements of this subdivision.

(v) Any other information required by rule of the commissioner.

(vi) The following legend: ''For more complete information about (Name of Issuer) and (Full Title of Security), send for additional information from (Name and Address) by sending this coupon or calling (Telephone Number).''

(B) The general announcement of proposed offering referred to in subparagraph (A) may also set forth the following information:

(i) A brief description of the business of the issuer.

(ii) The geographic location of the issuer and its business.

(iii) The price of the security to be issued, or, if the price is not known, the method of its determination or the probable price range as specified by the issuer, and the aggregate offering price.

(C) The general announcement of proposed offering shall contain only the information that is set forth in this paragraph.

(D) Dissemination of the general announcement of proposed offering to persons who are not qualified purchasers, without more, shall not disqualify the issuer from claiming the exemption under this subdivision.

(6) No telephone solicitation shall be permitted until the issuer has determined that the prospective purchaser to be solicited is a qualified purchaser.

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has

the authority to assess an administrative penalty of up to one thousand dollars ($1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued by a corporation or limited liability company pursuant to a purchase plan or agreement, or issued pursuant to an option plan or agreement, where the security at the time of issuance or grant is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section, provided that (1) the terms of any purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner no later than 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608. The failure to file the notice of transaction within the time specified in this subdivision shall not affect the availability of this exemption. An issuer that fails to file the notice shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay the commissioner a fee equal to the maximum aggregate fee payable had the transaction been qualified under Section 25110.

Offers and sales exempt pursuant to this subdivision shall be deemed to be part of a single, discrete offering and are not subject to integration with any other offering or sale, whether qualified under Chapter 2 (commencing with Section 25110), or otherwise exempt, or not subject to qualification.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4). All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides.

(q) Any offer or sale of any viatical or life settlement contract or fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(1) Sales of securities described in this subdivision are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser only if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons who are qualified purchasers.

(D) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, each with total assets in excess of five million dollars ($5,000,000) according to its most recent audited financial statements.

(E) A natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of one hundred fifty thousand dollars ($150,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars ($100,000) and reasonably expects gross income in excess of one hundred thousand dollars ($100,000) during the current tax year or (ii) has a minimum net worth of two hundred fifty thousand dollars ($250,000). ''Net worth'' shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction.

The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subdivision, of that natural person.

(F) Any other purchaser designated as qualified by rule of the commissioner.

(2) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.

(3) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities described in this subdivision are sold to, or a commitment to purchase is accepted from, the purchaser, the following information in writing:

(A) The name, principal business and mailing address, and telephone number of the issuer.

(B) The suitability standards for prospective purchasers as set forth in paragraph (1) of this subdivision.

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated.

(D) A brief description of the business of the issuer.

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cashflows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cashflows as of a date within 15 months before the date of the initial issuance of the securities described in this subdivision. The financial statements listed in this subparagraph shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than 120 days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements.

(F) The names of all directors, officers, partners, members, or trustees of the issuer.

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign country governmental agency or administrator, or of any state, federal or foreign country court of competent jurisdiction (i) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (ii) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the

offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (iii) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (iv) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subparagraph does not apply to any order, judgment, or decree that has been vacated, overturned, or is more than 10 years old.

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund pursuant to Section 25508.5.

(I) The name, address, and telephone number of the issuing insurance company, and the name, address, and telephone number of the state or foreign country regulator of the insurance company.

(J) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own.

(K) The insurance policy number, issue date, and type.

(L) If a group insurance policy, the name, address, and telephone number of the group, and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums.

(M) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary.

(N) That the insurance policy is beyond the state statute for contestability and the reason therefor.

(O) The insurance policy premiums and terms of premium payments.

(P) The amount of the purchaser's moneys that will be set aside to pay premiums.

(Q) The name, address, and telephone number of the person who will be the insurance policy owner and the person who will be responsible for paying premiums.

(R) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known.

(S) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical or life settlement contract or a fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, equal to, or may greatly exceed the estimated life

expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than the estimated life expectancy of the insured at the time the viatical or life settlement contract was closed.

(T) A statement that the purchaser should consult with his or her tax adviser regarding the tax consequences of the purchase of the viatical or life settlement contract or fractionalized or pooled interest therein and, if the purchaser is using retirement funds or accounts for that purchase, whether or not any adverse tax consequences might result from the use of those funds for the purchase of that investment.

(U) Any other information as may be prescribed by rule of the commissioner.

SEC. 2. Section 25212 of the Corporations Code is amended to read:

25212. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the broker-dealer, whether prior or subsequent to becoming a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any agent employed by the broker-dealer while so employed has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or in any report required to be filed with the commissioner under this law, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to a felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor, or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342, or 1343 of Title 18 of the United States Code.

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, or broker-dealer, or as an affiliated person or employee of any investment company, bank, or insurance

company, or from engaging in or continuing any conduct or practice in connection with that activity or in connection with the purchase or sale of any security.

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying registration to, or revoking or suspending the registration of, the person as a broker, dealer, agent, or investment adviser, (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling that person from membership in the association or exchange or from association with any member thereof, or (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(e) Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5 (commencing with Section 29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor.

(f) Is or has been subject to (1) any order of the Commodity Futures Trading Commission denying registration to, or revoking or suspending the registration of, that person under the Commodity Exchange Act, (2) any order of any board of trade or commodity exchange, including, but not limited to, the New York Mercantile Exchange, the Chicago Mercantile Exchange, the Chicago Board of Trade, or the Chicago Board Options Exchange, suspending or expelling that person from membership in the board of trade or commodity exchange or from association with any member thereof, or (3) any other order of the commission or any board or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(g) Has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any of the statutes or rules or regulations referred to in subdivision (e) above, or has failed reasonably to supervise, with a view to preventing violations of those statutes, rules and regulations, another person who commits a violation, if the other person is subject to his or her supervision; for the purposes of this subdivision, no person shall be deemed to have failed reasonably to supervise any person if (1) there have been established procedures, and a system for applying those procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by

the other person, and (2) that person has reasonably discharged the duties and obligations incumbent upon him or her by reason of those procedures and system without reasonable cause to believe that those procedures and system were not being complied with.

(h) Is subject to any currently effective order of the commissioner entered pursuant to Section 25213 revoking or suspending the certificate of the person as an agent.

(i) Has violated any provision of this division or the rules thereunder or, in the case of an applicant only, any similar regulatory scheme of the State of California or a foreign jurisdiction.

SEC. 3. Section 25230 of the Corporations Code is amended to read:

25230. (a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

(b) No person, on behalf of an investment adviser that has obtained a certificate pursuant to Section 25231, may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser and that person have complied with rules that the commissioner may adopt for the qualification and employment of those persons.

(c) The commissioner may, consistent with Section 25232.1, review the disciplinary history of an investment adviser representative upon the filing of notice of any of the following:

(1) The employment, association, or transfer of the investment adviser representative.

(2) An amendment to the information filed by the investment adviser representative at the time of employment, association, or transfer.

(3) The termination of employment or association of the investment adviser representative.

SEC. 4. Section 25232 of the Corporations Code is amended to read:

25232. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or

any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to any felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342, or 1343 of Title 18 of the United States Code.

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter or broker-dealer or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with that activity, or in connection with the purchase or sale of any security.

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying or revoking or suspending his or her registration as an investment adviser, or investment adviser representative, or as a broker or dealer or agent, (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling him or her from membership in that association or exchange or from association with any member thereof, or (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(e) Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5

(commencing with Section 29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor.

(f) Is or has been subject to (1) any order of the Commodity Futures Trading Commission denying registration to, or revoking or suspending the registration of, that person under the Commodity Exchange Act, (2) any order of any board of trade or commodity exchange, including, but not limited to, the New York Mercantile Exchange, the Chicago Mercantile Exchange, the Chicago Board of Trade, or the Chicago Board Options Exchange, suspending or expelling that person from membership in the board of trade or commodity exchange or from association with any member thereof, or (3) any other order of the commission or any board or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(g) Has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any statute or rule or regulation referred to in subdivision (e).

(h) Has violated any provision of this division or the rules thereunder or, in the case of an applicant only, any similar regulatory scheme of the State of California or a foreign jurisdiction.

SEC. 5. Section 25241 of the Corporations Code is amended to read:

25241. (a) Every broker-dealer and every investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires, subject to the limitations of Section 15(h) of the Securities Exchange Act of 1934 with respect to broker-dealers and Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers.

(b) All records so required shall be preserved for the time specified in the rule.

(c) All records referred to in this section are subject at any time and from time to time to reasonable periodic, special, or other examinations by the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(d) For the purpose of avoiding unnecessary duplications of examinations, the commissioner, insofar as he or she deems it practicable in administering this section, may cooperate with the securities administrators of other states, the Securities and Exchange Commission and any national securities exchange or national securities association.

(e) Unless otherwise provided by rule, every investment adviser subject to Section 25230 and every broker-dealer, including an applicant

for a license under Section 25210 or 25230, shall furnish an authorization for disclosure to the commissioner of financial records of the licensee's broker-dealer or investment adviser business pursuant to Section 7473 of the Government Code.

SEC. 6. Section 25247 of the Corporations Code is amended to read:

25247. (a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code and made available through the Public Disclosure Program of the National Association of Security Dealers, Incorporated (NASD) with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(b) Any broker-dealer or agent licensed or regulated under this part shall upon request deliver a written notice to any client when a new account is opened stating that information about the license status or disciplinary record of a broker-dealer or an agent may be obtained from the Department of Corporations, or from any other source that provides substantially similar information.

(c) The notice provided under subdivision (b) shall contain the office location or telephone number where the information may be obtained.

(d) A broker-dealer or agent shall be exempt from providing the notice required under subdivision (b) if a person who does not have a financial relationship with the broker-dealer or agent, requests only general operational information such as the nature of the broker-dealer's or agent's business, office location, hours of operation, basic services, and fees, but does not solicit advice regarding investments or other services offered.

(e) Upon written or oral request, the commissioner shall make available to any person the disciplinary records maintained on the Investment Adviser Registration Depository and made available through the Investment Advisor Public Disclosure Web site with respect to any investment adviser, investment adviser representative, or associated person of an investment adviser licensed or regulated under this part. The commissioner shall also make available the current license

status and the year of issuance of the license of an investment adviser. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provision of law, the commissioner may disclose that information either orally or in writing pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(f) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national, uniform application adopted or approved for use by the Securities and Exchange Commission, the North American Securities Administrators Association, or the National Association of Securities Dealers Regulation, Inc. that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

(g) This section shall not require the disclosure of criminal history record information maintained by the Federal Bureau of Investigation pursuant to Section 534 of Title 28 of the United States Code, and the rules thereunder, or information not otherwise subject to disclosure under the Information Practices Act of 1977.

SEC. 7. Section 25252 of the Corporations Code is amended to read:

25252. The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

(a) Any person subject to this division, other than a broker-dealer or investment adviser, who willfully violates any provision of this division, or who willfully violates any rule or order adopted or issued pursuant to this division, is liable for administrative penalties of not more than one thousand dollars ($1,000) for the first violation, and not more than two thousand five hundred dollars ($2,500) for each subsequent violation.

(b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars ($5,000) for the first violation, not more than ten thousand dollars ($10,000) for the second violation, and not more than fifteen thousand dollars ($15,000) for each subsequent violation.

(c) The administrative penalties shall be collected by the commissioner and paid into the State Corporations Fund.

(d) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this division.

SEC. 8. Section 25256 is added to the Corporations Code, to read:

25256. (a) For any broker-dealer or investment adviser, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section precludes the commissioner from applying a specific statutory provision in this division providing for discipline against a broker-dealer or investment adviser, as a result of disciplinary action taken against a broker-dealer or an investment adviser, by the State of California, another state, an agency of the federal government, or another country.

SEC. 9. Section 25404 is added to the Corporations Code, to read:

25404. It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of this division.

SEC. 10. Section 25532 of the Corporations Code is amended to read:

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

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

appropriately licensed or the required filing has been made under this law.

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

(d) If, after an order has been served under subdivision (a), (b), or (c), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

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

SEC. 11. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for in subdivision (b), any person who willfully violates any provision of this division, or who willfully violates any rule or order under this division, shall upon conviction be fined not more than one million dollars ($1,000,000), or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both that fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

(c) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than twenty-five million dollars ($25,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 12. Section 25541 of the Corporations Code is amended to read:

25541. (a) Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer, purchase, or sale of any security or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any security shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

(b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates subdivision (a) shall upon conviction be fined not more than twenty-five million dollars ($25,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 13. Section 25612.3 is added to the Corporations Code, to read:

25612.3. Unless otherwise provided by rule, the commissioner shall require the use of the following forms:

(a) Form BD (Uniform Application for Broker-Dealer Registration) for a broker-dealer application.

(b) Form ADV (Uniform Application for Investment Adviser Registration) for an investment adviser application.

(c) Form BDW (Uniform Request for Broker-Dealer Withdrawal) for withdrawing from licensure as a broker-dealer.

(d) Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) for withdrawing from licensure as an investment adviser.

(e) Form U-4 (Uniform Application for Securities Industry Registration or Transfer) for the reporting of an agent of a broker-dealer or an investment adviser representative or associated person of an investment adviser.

(f) Form U-5 (Uniform Termination Notice for Securities Industry Registration) for the reporting of the termination of an agent of a broker-dealer or an investment adviser representative or associated person of an investment adviser.

SEC. 14. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and the Franchise Investment Law (Division 5 (commencing with Section 31000)) and effective securities and franchise regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission,

the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subdivision (a) includes, but is not limited to, the following actions:

(1) Prescribing rules and forms with a view to achieving maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Participating in a nationwide central depository for qualification or registration of securities under this law and for documents or records required or allowed to be maintained under this law.

(3) Participating in the Central Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of broker-dealers or agents, or both.

(4) Participating in the Investment Adviser Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of investment advisers or investment adviser representatives, or both.

(5) Cooperating in any regulatory activity necessary in the administration of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act), consistent with state law.

(c) Notwithstanding any other provision of law, any application for qualification, amendment to the application or related securities qualification or registration document or notice under Sections 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and 25230.1 or record otherwise required to be signed that is filed in this state as an electronic record pursuant to a nationwide central depository for qualification or registration of securities, or any electronic record filed through the Central Registration Depository or the Investment Adviser Registration Depository, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(d) For purposes of this section, ''electronic record'' has the same meaning as in subdivision (g) of Section 1633.2 of the Civil Code.

SEC. 15. Section 12221 of the Financial Code is amended to read:

12221. Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for the license for any of the following reasons:

(a) A false statement of a material fact has been made in the application for license.

(b) Any officer, director, or member 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) The applicant, any officer, director, general partner, or member of the applicant, or any person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(d) The applicant has not complied with all the applicable provisions of this division.

(e) The proposed officers and directors do not have sufficient check selling, bill paying, prorating, or other experience to afford reasonable promise of successful operation.

(f) The plan of business does not demonstrate that the proposed business will have a reasonable chance for a successful operation.

(g) The proposed business is being formed for a purpose other than the legitimate objectives contemplated by this division.

(h) The proposed capital structure is inadequate.

SEC. 16. Section 12307.5 is added to the Financial Code, to read:

12307.5. (a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

SEC. 17. 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 owning 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.

SEC. 18. 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 owning 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. 19. Section 17424 is added to the Financial Code, to read:

17424. (a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

SEC. 20. Section 22109 of the Financial Code is amended to read:

22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years (A) been convicted of or pleaded nolo contendere to a crime, or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license

or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 21. Section 22705.1 is added to the Financial Code, to read:

22705.1. (a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

SEC. 22. Section 23001 of the Financial Code is amended to read:

23001. As used in this division, the following terms have the following meanings:

(a) ''Deferred deposit transaction'' means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement, as provided in Section 23035.

(b) ''Commissioner'' means the Commissioner of Corporations.

(c) ''Department'' means the Department of Corporations.

(d) ''Licensee'' means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, ''licensee'' does not include a state or federally chartered bank, thrift, savings association, industrial loan company, or credit union. ''Licensee'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business. ''Licensee'' also does not include an employee regularly employed by a licensee at the licensee's place of business. An employee, when acting under the scope of the employee's employment, shall be exempt from any other law from which the employee's employer is exempt.

(e) ''Person'' means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock

company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) ''Deferred deposit originator'' means a person who offers, originates, or makes a deferred deposit transaction.

SEC. 23. Section 18 of this bill incorporates amendments to Section 17209.3 of the Financial Code proposed by both this bill and AB 479. 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 479, in which case Section 17 of this bill shall not become operative.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 474

An act to amend Section 54988 of the Government Code, and to amend Sections 17958.8, 17980, 17980.1, 17991, and 17992 of, to amend and renumber Section 17980.8 of, and to add Sections 17960.10 and 17980.11 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 54988 of the Government Code is amended to read:

54988. (a) (1) In addition to any other remedy provided by law, including the current powers of charter cities, the legislative body of a city, county, or city and county may collect any fee, cost, or charge incurred in any of the following:

(A) The abatement of public nuisances.

(B) The correction of any violation of any law, regulation, or local ordinance that would also be a violation of Section 1941.1 of the Civil Code.

(C) The enforcement of zoning ordinances adopted pursuant to Chapter 4 (commencing with Section 65800) of Division 1 of Title 7 or any other constitutional or statutory authority.

(D) Inspections and abatement of violations of Article 1 (commencing with Section 13100) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code and regulations or ordinances adopted pursuant to that article.

(E) Inspections and abatement of violations of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code) and regulations or ordinances adopted pursuant to that part.

(F) Inspections and abatement of violations of the California Building Standards Code (Title 24 of the California Code of Regulations).

(G) Inspections and abatement related to local ordinances and regulations that implement any of the foregoing.

If the fee, cost, or charge has not been paid within 45 days of notice thereof, the city, county, or city and county may collect the fee, cost, or charge by making the amount of the unpaid fee, cost, or charge a proposed lien against the property that is the subject of the enforcement activity.

Except as provided in subdivision (c), the amount of the proposed lien may be collected at the same time and in the same manner as property taxes are collected. All laws applicable to the levy, collection, and enforcement of ad valorem taxes shall be applicable to the proposed lien, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of enforcement relating to the property shall be transferred to the unsecured roll for collection.

(2) The amount of any fee, cost, or charge shall not exceed the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.

(3) This section shall not apply to owner-occupied residential dwelling units.

(4) This section does not apply to any enforcement, abatement, correction, or inspection activity regarding a violation in which the violation was evident on the plans that received a building permit.

(b) (1) A city, county, or city and county shall provide the owner of the property with written notice in plain language of the proposed lien, a description of the basis for the amounts comprising the lien, a

minimum of 45 days after notice to pay the fee, cost, or charge, and an opportunity to appear before the legislative body and be heard regarding the amount of the proposed lien. The notice shall be mailed by certified mail to the last known address of the owner of the property.

(2) In any city, county, or city and county, the legislative body may delegate the holding of the hearing required by paragraph (1) to a hearing board designated by the legislative body. The hearing board may be the housing appeals board established pursuant to Section 17920.5 of the Health and Safety Code or any other body designated by the legislative body. The hearing board shall make a written recommendation to the legislative body which shall include factual findings based on evidence introduced at the hearing. The legislative body may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the legislative body. Notice in writing of the de novo hearing shall be provided to the property owner at least 10 days in advance of the scheduled hearing.

(c) If the legislative body determines that the proposed lien authorized pursuant to subdivision (a) shall become a lien, the body may also cause a notice of lien to be recorded. This lien shall attach upon recordation in the office of the county recorder of the county in which the property is situated and shall have the same force, priority, and effect as a judgment lien, not a tax lien. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, set forth the date upon which the lien was created against the property, and include a description of the real property subject to the lien and the amount of the lien.

SEC. 2. Section 17958.8 of the Health and Safety Code is amended to read:

17958.8. Local ordinances or regulations governing alterations and repair of existing buildings shall permit the replacement, retention, and extension of original materials and the use of original methods of construction for any building or accessory structure subject to this part, including a hotel, lodginghouse, motel, apartment house, or dwelling, or portions thereof, as long as the portion of the building and structure subject to the replacement, retention, or extension of original materials and the use of original methods of construction complies with the building code provisions governing that portion of the building or accessory structure at the time of construction, and the other rules and regulations of the department or alternative local standards governing that portion at the time of its construction and adopted pursuant to Section 13143.2 and the building or accessory structure does not become or continue to be a substandard building.

SEC. 3. Section 17960.10 is added to the Health and Safety Code, to read:

17960.10. The building department, housing department, or health department enforcing any of the provisions of this part may develop a list of public or publicly funded private agencies that finance or assist residential rehabilitation or repair activities for real property owners or renters. Notwithstanding any other provision of law, the staff of that department may provide written or oral referrals to any of those financing or assistance agencies in conjunction with, or as a result of, any inspection, notice of violation, or other activity and may include on the list any loan or grant program operated by the city, county, or city and county employing that staff.

SEC. 4. Section 17980 of the Health and Safety Code is amended to read:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or in violation of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance or violation, or a notice to abate with a shorter period of time if deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done within the period required by the notice.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) (1) Notwithstanding subdivision (b) and notwithstanding local ordinances, tenants in a residential building shall be provided copies of any of the following:

(A) The notice of any violation described in subdivision (a) that affects the health and safety of the occupants and that causes the building to be substandard pursuant to Section 17920.3 or in violation of Section 17920.10.

(B) An order of the code enforcement agency issued after inspection of the premises declaring the dwelling to be in violation of any provision described in subdivision (a).

(C) The enforcement agency's decision to repair or demolish.

(D) The issuance of a building or demolition permit following the abatement order of an enforcement agency.

(2) Each document provided pursuant to paragraph (1) shall be provided to each affected residential unit by the enforcement agency that issued the order or notice, in the manner prescribed by subdivision (a) of Section 17980.6.

(d) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year. In addition, in Los Angeles County, the notice shall contain a provision notifying the owner that within 10 days of recordation of a notice of substandard conditions or similar document, the owner is required to comply with Section 17997.

(e) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

SEC. 5. Section 17980.1 of the Health and Safety Code is amended to read:

17980.1. (a) If a building is identified by a city, city and county, or county pursuant to Article 4 (commencing with Section 19160) of

Chapter 2 of Part 3 of Division 13, or Section 8875.2 of the Government Code as being potentially hazardous to life in the event of an earthquake or is identified for any other reason to be hazardous to life in the event of an earthquake, or is identified as being in a condition that substantially endangers the health and safety of residents pursuant to Section 17980.6, an order requiring the building to be retrofitted to local seismic building standards or repaired so as not to violate any law, regulation, or ordinance applicable to the maintenance and use of the building, may be executed by the enforcement agency or its agents or contractors if all of the following conditions are satisfied:

(1) The hazardous condition is of a nature that would endanger the immediate health and safety of residents or the public in the event of an earthquake.

(2) The extent and nature of a hazardous condition related to seismic safety is such that it could be corrected with the application of current technology.

(3) Any abatement order of the enforcement agency is not complied with or not so far complied with as the enforcement agency may regard as reasonable, within the time therein designated.

(b) If the owner does not comply with the abatement order within a reasonable time after issuance of the order, the enforcement agency may, as an alternative to any other remedy permitted under law, seek the remedy provided by this section if the court finds the owner in violation of the abatement order and finds that the abatement order was issued in order to correct a hazardous condition which would endanger the immediate health and safety of residents or the public in the event of an earthquake or because of any violation of this part.

(c) After serving notice upon the owner not less than 48 hours prior to the filing of the application in accordance with the procedures for notice specified by this subdivision, the enforcement agency, in accordance with this section, Sections 17980.1 to 17980.3, inclusive, and Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, may thereafter apply to the superior court in the county where the property is situated by petition for an order directing the owner and any mortgagees or lienors of record to show cause why an individual or group as proposed by the enforcement agency should not be appointed as a receiver, and why the receiver should not remove or remedy the condition and obtain a lien, as provided in Section 17980.2, in favor of the enforcement agency against the property, with the lien having the priority as specified in subdivision (b) of Section 17980.2, to secure repayment of the costs incurred by the receiver in removing or remedying the condition. The application shall contain all of the following:

(1) Proof by affidavit that an abatement order of the enforcement agency has been issued and served on the owner, mortgagees, and lienors in accordance with this section, and that the notice containing the same particulars as are required in the abatement order, including the work to be done, has been filed in the office of the county recorder in which mechanic's liens affecting the property would be filed.

(2) A statement that the abatement order has not been complied with or not so far complied with as the enforcement agency may regard as reasonable within the time period therein designated.

(3) A statement that a condition that constitutes a serious hazard and is a serious threat to life, health, or safety continues to exist upon the property, and a description of the property and the factors constituting the unsafe condition.

(4) A plan describing how the receiver shall perform the required work, and how rents, issues, and profits shall be collected and distributed among the owner, mortgagee, lienor, and enforcement agency or receiver, and including an estimate as to the costs of the required work, the approximate time when the repairs will be completed, a statement as to whether a displacement of any occupant is required, and provisions regarding assistance for displaced occupants.

(d) The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers on which it is based on the owners and mortgagees of record and lienors. Alternative service may be made upon the owner by posting upon the property and thereafter mailing to the owner at the last known address, and upon the mortgagee or lienor by mailing to the address set forth in the recorded mortgage or lien and by publication in a newspaper of general circulation in the county where the premises are located. The service shall be completed on filing proof of service thereof in the office of the county clerk.

(e) On the return of the order to show cause, the proceeding regarding that order shall have precedence over every other business of the court, unless the court finds that some other pending proceeding, having a similar statutory precedence, shall have priority. If the court finds good cause therefor, and finds that the cost of repairs, when added to any valid encumbrances on the building, shall not exceed the projected value of the building when repaired, then the court shall appoint a receiver named in the application or another person deemed appropriate, in accordance with this section and Section 17980.2. However, prior to the appointment of a receiver, if the owner or any mortgagee or lienor or other person having an interest in the property applies to the court to be permitted to remove or remedy the conditions, and demonstrates the ability promptly to undertake the work required, and posts security for the performance thereof within the time, and in the amount and manner

deemed necessary by the court, then the court may, in lieu of appointing the receiver, issue an order permitting that person to perform the work within a time fixed by the court.

(f) If the conditions have not been satisfactorily remedied or removed within the time fixed in the abatement order, then the court shall appoint a receiver. If, after granting a court order permitting a person to perform the work, but before the time fixed by the court for the completion thereof, it appears to the enforcement agency that the person permitted to do the work is not proceeding in a timely fashion, the enforcement agency may petition the court for a hearing to determine whether a receiver should be appointed immediately. On the failure of the owner, mortgagee, lienor, or other person having an interest in the property to complete the work in accordance with the provisions of the order, the costs of the receiver thereafter appointed in removing or remedying the condition, and for other charges herein provided for, shall be reimbursed, paid, or made subject to a lien pursuant to Section 17980.2, or any combination of these.

(g) Upon the appointment of a receiver by the court, which shall include the posting of a bond by the receiver, pursuant to subdivision (b) of Section 567 of the Code of Civil Procedure, a copy of the order making the appointment, authenticated by a certificate of the clerk of the court and particularly describing the property which is subject to the receivership, shall be recorded in each county in which any portion of the land is located. However, if the court determines that the receiver will be acting under the general direction of the enforcement agency, the receiver may be deemed a public officer pursuant to Section 995.220 of the Code of Civil Procedure.

(h) In addition to the powers specifically requested by the enforcement agency for the receiver, the receiver shall be authorized to employ attorneys, accountants, contractors, architects, engineers, and other clerical and professional personnel to assist the receiver in the performance of these duties and responsibilities.

(i) Notwithstanding Section 6103 or 27383 of the Government Code, a county clerk or county recorder, or clerk of the court may charge a fee to any party, including a public agency, for the cost, incurred pursuant to this section, of filing, recording, or authentication of documents at the request of that party.

SEC. 6. Section 17980.8 of the Health and Safety Code, as added by Section 2 of Chapter 1194 of the Statutes of 1989, is amended and renumbered to read:

17980.10. (a) An enforcement agency that properly declares any dwelling a nuisance and, using the notice requirements and procedures specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations, confirms the

declaration by resolution of its governing board shall be deemed to have acquired jurisdiction to abate the nuisance by repairing or causing to have repairs made to the property, by razing or removing the dwelling or in any other way causing the nuisance to be abated.

(b) The enforcement agency shall keep an itemized account of all of the expenses involved in abating the nuisance, including the razing or removing of the dwelling. The enforcement agency shall cause to be posted conspicuously on the property where the nuisance was abated, repairs were made, or where the dwelling was razed or removed, an expense statement. This statement shall be verified by the officer of the enforcement agency in charge of doing the work, showing the reasonable gross and net expense of the abatement actions taken by the agency, including the expense of inspections; repairs, if any; the cost of the razing or removing of the building, if applicable; and any other costs of abatement, together with a notice of the time and place when and where the statement shall be submitted to the governing board of the enforcement agency for approval and confirmation. In addition to being posted on the property, this statement shall be sent by certified mail to each owner and other interested party, as specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations.

(c) At the meeting noticed pursuant to subdivision (b), the governing board shall consider any objections or protests, if any, that may be raised by the property owner liable to be assessed for the cost of the work, or by any other interested persons. If the governing board confirms the statement of costs of abatement, those costs shall be the obligation of each owner of the property to pay to the public entity that has incurred them.

(d) Notwithstanding any other provision of law, any hearing required under this section shall be conducted in accordance with requirements adopted by the enforcement agency that are in substantial compliance with those contained in Chapter 13 (commencing with Section 1301), or the successor provisions to that chapter, of the most recent edition of the Uniform Housing Code of the International Conference of Building Officials or as specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations.

SEC. 7. Section 17980.11 is added to the Health and Safety Code, to read:

17980.11. If an enforcement agency has recorded with a county recorder any notice of substandard or untenantable conditions issued pursuant to this part for a residential structure, and if the enforcement agency anticipates that it will pursue the remedies provided by subdivision (b) of Section 17980.7 or subdivision (c) of Section 17980.9, or Section 17274 or 22436.5 of the Revenue and Taxation

Code, it may require the private owner of that structure, within 10 days of recordation, to submit to the enforcement agency the following information:

(a) If the property owner is an individual, the name, address, driver's license number or identification card number, social security number or tax identification number, and any other information deemed necessary by the enforcement agency to file the documents necessary to utilize Section 17274 of the Revenue and Taxation Code.

(b) If the property owner is a corporation, trust, real estate trust, or any other entity whose taxes are subject to Part 11 (commencing with Section 23001) of the Revenue and Taxation Code, the name, address, tax identification number, and any other information deemed necessary by the enforcement agency to file the documents necessary to utilize Section 22436.5 of the Revenue and Taxation Code.

(c) If the property owner is a limited liability company, partnership, limited partnership, trust, or real estate investment trust, or any other entity which has owners, partners, members, or investors whose state taxes are subject to Part 10 (commencing with Section 17001) of the Revenue and Taxation Code and whose income, deductions, or tax credits are subject to any change because of interest payments, taxes, depreciation, or amortization related to the substandard housing, the name, address, driver's license number or identification card number, social security number or tax identification number, and any other information deemed necessary by the enforcement agency to file the documents necessary to utilize Section 17274 of the Revenue and Taxation Code.

SEC. 8. Section 17991 of the Health and Safety Code is amended to read:

17991. (a) The sale or other transfer of property to a third party shall not render moot an administrative or judicial action or proceeding pursuant to this article, including an action under Section 17982, instituted by an enforcement agency, or a receiver on behalf of an enforcement agency, against the owner of record on the date a citation for, or other notice of, a violation of this part was issued.

(b) In the event of any sale or other transfer of property to a third party during the period between the issuance of the notice of violation and the abatement of the violation, or any administrative or judicial actions related thereto, within five days after the sale or transfer occurs, the transferor shall record a Notice of Conveyance of Substandard Property with the county recorder where the property is located, identifying the name and address of the buyer of transferee and executed with a signature that the information is true and correct, under penalty of perjury.

(c) In the event of any sale of other transfer of property to a third party during the period between the issuance of the notice of violation and the abatement of the violation, or any administrative or judicial actions related thereto, the transferor shall provide all of the following information to the enforcement agency with five days after the sale or transfer occurs:

(1) If the seller or transferor is not an individual person, the name, address, and driver's license number or identification card number of each individual who has an interest in excess of 5 percent in the entity which is selling or transferring the property.

(2) If the buyer or transferee is an individual person, the name, address, and driver's license number or identification number of that individual.

(3) If the buyer or transferee is not an individual person, the name, address, and driver's license number or identification card number of each individual who has an interest in excess of 5 percent in the entity that is the buyer or transferee of the property.

SEC. 9. Section 17992 of the Health and Safety Code is amended to read:

17992. Any person who obtains an ownership interest in any property after a notice of pendency of an action or proceeding was recorded with respect to the property pursuant to Section 17985 or any other notice of a violation of this part was recorded with the county recorder of the county in which the property is located, and where there has been no withdrawal or expungement of the notice, shall be subject to any order to correct a violation, including time limitations, specified in a citation issued pursuant to Sections 17980 and 17981 or any other notice of a violation of this part that was recorded with the county recorder of the county in which the property is located.

CHAPTER 475

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 September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. The sum of four hundred twenty-eight thousand dollars ($428,000) is hereby appropriated from the General Fund to the

Executive Officer of the California Victim Compensation and Government Claims Board for the payment of Claim No. G537834 (In the Matter of Quedellis Ricardo Walker) upon approval of this claim by the board. If the board determines that the amount to pay this claim is less than the amount appropriated, any remaining moneys from this appropriation shall revert back to the General Fund on June 30 of the fiscal year in which the final payment of the claim is made.

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 476

An act to add Chapter 4.5 (commencing with Section 42500) to Part 4 of Division 26 of, the Health and Safety Code, and to amend Section 9250.11 of the Vehicle Code, relating to air quality.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Chapter 4.5 (commencing with Section 42500) is added to Part 4 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.5. PROTECT CALIFORNIA AIR ACT OF 2003

42500. This chapter shall be known, and may be cited, as the Protect California Air Act of 2003.

42501. The Legislature finds and declares all of the following:

(a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.) has required major new and modified sources of air pollution to be subject to a new source review program for nonattainment areas and for the prevention of significant deterioration, in order to ensure that those sources use the requisite level of emission control, offset any new emissions, and comply with other requirements, as a means of ensuring that those new and modified sources do not adversely affect air quality.

(b) Requiring controls and emission offsets for new and modified sources ensures that industrial growth does not result in unacceptable

levels of air pollution and that existing sources operate more cleanly over time by applying emission controls when those sources are overhauled or upgraded. Without these limits, air quality would degrade over time, and industrial growth, critical to the economic health of the state, would be foreclosed.

(c) The new source review program has been a cornerstone of the state's efforts to reduce pollution from new and existing industrial sources by requiring those sources to use the requisite level of emission controls based on the attainment status of the area where the source is located.

(d) The U.S. Environmental Protection Agency (U.S. E.P.A.) initially promulgated, and subsequently has revised, the new source review program to carry out the requirements of the federal Clean Air Act for preconstruction review of new and modified sources of air pollutants by the states.

(e) On December 31, 2002, the U.S. E.P.A., under the direction of the President of the United States, promulgated regulations that substantially weaken the basic federal new source review program (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the regulatory amendments, the U.S. E.P.A. claims that the new source review program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency, and safety. This claim is contradicted by California's experience under the new source review programs of the air pollution control and air quality management districts.

(f) The amendments promulgated December 31, 2002, will drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review. The U.S. E.P.A. has also proposed a rule that will change the definition of "routine maintenance, repair and replacement.'' If that rule is finalized, it will significantly worsen the situation.

(g) The newly revised and proposed federal new source review reneges on the promise of clean air embodied in the federal Clean Air Act, and threatens to undermine the air quality of the State of California and thereby threaten the health and safety of the people of the State of California.

(h) Section 107 of the federal Clean Air Act (42 U.S.C. Sec. 7407) provides that the state has primary responsibility for meeting ambient air quality standards in all areas of the state, and that the means to achieve the standards shall be set out in the state implementation plan, or SIP.

(i) Section 116 of the federal Clean Air Act (42 U.S.C. Sec. 7416) preserves the right of states to adopt air pollution control requirements that are more stringent than comparable federal requirements. Moreover, the recent revisions to the federal new source review regulations provide

that the states may adopt permitting programs that are ''at least as stringent'' as the new federal ''revised base program,'' and that the federal regulations ''certainly do not have the goal of 'preempting' State creativity or innovation.'' (67 Fed.Reg. 80241 (Dec. 31, 2002)).

42502. The Legislature further finds and declares all of the following:

(a) The people of the State of California have a primary interest in safeguarding the air quality in the state from degradation and in ensuring the enhancement of the air quality of the state.

(b) Emissions from nonvehicular sources are a significant contributing factor to unhealthful levels of air pollution in California. These emissions must be controlled to protect public health and the environment, and to allow the economic benefits of new and expanded business in this state without compromising those important goals.

(c) Under state law, air quality management districts and air pollution control districts have primary responsibility for controlling air pollution caused by nonvehicular sources, including stationary sources. The primary mechanism for controlling pollution from new and modified stationary sources is the existing new source review program of the districts. The application of the new source review programs requires that all new and modified sources, unless specifically exempted, must apply control technology and offset emissions increases as a condition of receiving a permit.

(d) The districts generally require the application of the lowest achievable emission rate, also known as California BACT, to achieve the necessary level of emission control from new or modified sources.

(e) The requirement for California BACT, offsets, and other requirements are set out in the rules and regulations adopted by the districts to establish the new source review program. These rules and regulations, which typically are more stringent than the minimum requirements established by federal law, are reviewed and approved by the state board and transmitted to the U.S. E.P.A. for inclusion in the SIP.

(f) The districts have one of the most effective new source review programs in the nation, with requirements for advanced emission control technology on new and expanding sources as its foundation. This technology-based program succeeds by requiring application of emission control technology at the time of construction or when a source undergoes a significant modification, which maximizes the emission reduction benefits and reduces costs.

(g) With this and other programs, California has been able to improve air quality despite increases in population, industrial output, and motor vehicle use. However, significant areas of the state still do not meet the federal or state ambient air quality standards, which are set at levels necessary to protect public health and welfare. Any rollback of the new

source review program, as a result of the federal ''reforms,'' would exacerbate the continuing air pollution challenges faced by the state and delay attainment of the state and federal ambient air quality standards.

42503. The purposes of this chapter are all of the following:

(a) To attain and maintain state and federal ambient air quality standards by the earliest practicable date.

(b) To protect public health and welfare from any actual or potential adverse effect which reasonably may be anticipated to occur from air pollution.

(c) To preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value.

(d) To ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.

(e) To ensure that emissions from any source in the state will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for this or any other state.

(f) To ensure that any decision to permit increased air pollution in any area to which this chapter applies is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

42504. (a) No air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002. If the state board finds, after a public hearing, that a district's rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b).

(b) (1) In amending or revising its new source review rules or regulations, a district may not change any of the following that existed on December 30, 2002, if the amendments or revisions would exempt, relax or reduce the obligations of a stationary source for any of the requirements listed in paragraph (2):

(A) The applicability determination for new source review.

(B) The definition of modification, major modification, routine maintenance, or repair or replacement.

(C) The calculation methodology, thresholds or other procedures of new source review.

(D) Any definitions or requirements of the new source review regulations.

(2) (A) Any requirements to obtain new source review or other permits to construct, prior to commencement of construction.

(B) Any requirements for best available control technology (BACT).

(C) Any requirements for air quality impact analysis.

(D) Any requirements for recordkeeping, monitoring and reporting in a manner that would make recordkeeping, monitoring, or reporting less representative, enforceable, or publicly accessible.

(E) Any requirements for regulating any air pollutant covered by the new source review rules and regulations.

(F) Any requirements for public participation, including a public comment period, public notification, public hearing, or other opportunities or forms of public participation, prior to issuance of permits to construct.

(c) In amending or revising its new source review rules or regulations, a district may change any of the items in paragraph (1) of subdivision (b) only if the change is more stringent than the new source review rules or regulations that existed on December 30, 2002.

(d) Notwithstanding subdivisions (a), (b), and (c), a district may amend or revise a rule or regulation if a district board, at the time the amendments or revisions are adopted, makes its decision based upon substantial evidence in the record, the amendments or revisions are submitted to and approved by the state board after a public hearing, and each of the following conditions is met:

(1) The amended or revised rule or regulation will do one of the following:

(A) Will replace an existing rule or regulation that caused a risk to public health or safety from exposure to a toxic material, a dangerous condition, or an infectious disease with a rule or regulation that provides greater protection to public health or safety.

(B) Will replace an existing rule or regulation that has been found to be unworkable due to engineering or other technical problems with a rule or regulation that is effective.

(C) Will allow an amendment to an existing rule or regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, if all of the following criteria are met:

(i) The amendment is narrowly tailored to relieve the identified hardship.

(ii) The district provides equivalent reductions in emissions of air contaminants to offset any increase in emissions of air contaminants.

(iii) All reductions in emissions of air contaminants are real, surplus, quantifiable, verifiable, enforceable, and timely. For the purposes of this clause, reductions are timely if they occur no more than three years prior to, and no more than three years following, the occurrence of the increase in emissions of air contaminants.

(iv) Information regarding the reductions in emissions of air contaminants is available to the public.

(D) Is a temporary rule or regulation necessary to respond to an emergency consisting of a sudden, unexpected occurrence and demanding prompt action to prevent or mitigate loss of or damage to life, health, property, or essential services and the temporary rule or regulation does not extend beyond the reasonably anticipated duration of the emergency.

(E) Will not, if the district is in attainment with all national ambient air quality standards, impair or impede continued maintenance of those standards or progress toward achieving attainment of state ambient air quality standards.

(2) The amended or revised rule or regulation will not exempt, relax, or reduce the obligation of any stationary source under the rules or regulations of the district, as those rules or regulations existed on December 30, 2002, to obtain a permit or to meet best available control technology requirements. This paragraph only applies to a source that constituted a major source under the rules or regulations of a district that existed on December 30, 2002, and does not apply to any individual best available control technology determination.

(3) The amended or revised rule or regulation is otherwise consistent with this division.

(4) The amended or revised rule or regulation is consistent with any guidance approved by the state board regarding environmental justice.

42505. For purposes of this chapter, each district's ''existing new source review program'' is comprised of those new source review rules and regulations for both nonattainment and prevention of significant deterioration for new, modified, repaired, or replaced sources that have been adopted by the district governing board on or prior to December 30, 2002, that have been submitted to the U.S. Environmental Protection Agency by the state board for inclusion in the state implementation plan and are pending approval or have been approved by the U.S. Environmental Protection Agency.

42506. In order to assist in interpreting district rules and regulations governing new source review for nonattainment areas and for prevention of significant deterioration, the state board shall provide on its Web site and in writing for purchase by the public, a copy of the federal new source review regulations as they existed on December 30, 2002, and the United States Environmental Protection Agency's guidance document entitled, ''New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting,'' (October 1990 Draft).

42507. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, it is the intent of the

Legislature that the invalidity not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 2. Section 9250.11 of the Vehicle Code is amended to read:

9250.11. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) may be imposed by the South Coast Air Quality Management District and shall be paid to the department, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and registered in the south coast district, except any vehicle that is expressly exempted under this code from the payment of registration fees.

(b) Prior to imposing fees pursuant to this section, the south coast district board shall approve the imposition of the fees through the adoption of a resolution by both a majority of the district board and a majority of the district board who are elected officials. After deducting all costs incurred pursuant to this section, the department shall distribute the additional fees collected pursuant to subdivision (a) to the south coast district, which shall use the fees to reduce air pollution from motor vehicles through implementation of Sections 40448.5 and 40448.5.1 of the Health and Safety Code.

(c) Any memorandum of understanding reached between the district and a county prior to the imposition of a one dollar ($1) fee by a county shall remain in effect and govern the allocation of the funds generated in that county by that fee.

(d) The South Coast Air Quality Management District shall adopt accounting procedures to ensure that revenues from motor vehicle registration fees are not commingled with other program revenues.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 477

An act to add Sections 2207 and 17655 to the Corporations Code, relating to corporations.

[Approved by Governor September 22, 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 that unlawful activities of private corporations may result in damages not only to the corporation and its shareholders and investors, but also to employees of the corporation and the public at large. The damages caused by unlawful activities may be prevented by the early detection of wrongdoing. While corporate executives and managers are already governed by federal and other state law with regard to their duties to the corporation, the Legislature finds and declares that enhanced disclosure requirements are needed to ensure appropriate notification of authorities and shareholders when a corporation acquires knowledge that a materially false or misleading statement is made by the corporation or its officers and agents that affect the public's perception of the financial condition of the corporation and that affect the market.

(b) It is the intent of the Legislature to ensure that corporations and limited liability companies notify government authorities and their shareholders or members when they acquire actual knowledge that materially false or misleading statements are made. It is also the intent of the Legislature that, together with the changes to the Whistleblower Protection Act that Senate Bill No. 777 would enact, publicly traded corporations and limited liability companies act in a responsible manner with respect to statements about their financial condition, especially when those decisions affect not only their shareholders and the public, but also their employees.

SEC. 2. Section 2207 is added to the Corporations Code, to read:

2207. (a) A corporation is liable for a civil penalty in an amount not exceeding one million dollars ($1,000,000) if the corporation does both of the following:

(1) Has actual knowledge that an officer, director, manager, or agent of the corporation does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted either generally or privately to the shareholders or other persons either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures, that includes a material false statement or omission intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after the actual knowledge is acquired of the actions described in paragraph (1), the corporation knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the corporation has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its shareholders in writing, unless the corporation has actual knowledge that the shareholders have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the corporation, or by an officer, director, manager, or agent of the corporation under paragraph (1) of subdivision (a) is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the corporation reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (4) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) ''Manager'' means a person having both of the following:

(A) Management authority over a business entity.

(B) Significant responsibility for an aspect of a business that includes actual authority for the financial operations or financial transactions of the business.

(2) ''Agent'' means a person or entity authorized by the corporation to make representations to the public about the corporation's financial condition and who is acting within the scope of the agency when the representations are made.

(3) ''Shareholder'' means a person or entity that is a shareholder of the corporation at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) ''Notify its shareholders'' means to give sufficient description of an action taken or about to be taken that would constitute acts or

omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a corporation with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a), but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) ''Appropriate government agency'' means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation:

(A) Department of Corporations.

(B) Department of Insurance.

(C) Department of Financial Institutions.

(D) Department of Managed Health Care.

(E) United States Securities and Exchange Commission.

(6) ''Actual knowledge of the corporation'' means the knowledge an officer or director of a corporation actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the corporation's disclosure controls and procedures.

(7) ''Refuse to make a book entry'' means the intentional decision not to record an accounting transaction when all of the following conditions are satisfied:

(A) The independent auditors required recordation of an accounting transaction during the course of an audit.

(B) The audit committee of the corporation has not approved the independent auditor's recommendation.

(C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

(8) ''Refuse to post any notice required by law'' means an intentional decision not to post a notice required by law when all of the following conditions exist:

(A) The decision not to post the notice has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(9) ''Misstate or conceal material facts from a regulatory body'' means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(10) ''Material false statement or omission'' means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) ''Officer'' means any person as set forth in Rule 16A-1 promulgated under the Securities Exchange Act of 1934 or any successor regulation thereto, except an officer of a subsidiary corporation who is not also an officer of the parent corporation.

(f) This section only applies to corporations that are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (P.L. 107-204; 15 U.S.C. Sec. 7201 and following).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

SEC. 3. Section 17655 is added to the Corporations Code, to read:

17655. (a) A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars ($1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted either generally or privately to the shareholders or other persons either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures that includes a material false statement or omission intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to

avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after the actual knowledge is acquired of the actions described in paragraph (1), the limited liability company knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the limited liability company has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its members and investors in writing, unless the limited liability company has actual knowledge that the members and investors have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the limited liability company, or by a member, officer, manager, or agent of the limited liability company under paragraph (1) of subdivision (a) is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the limited liability company reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (4) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) ''Manager'' means a person defined by subdivision (w) of Section 17001 having both of the following:

(A) Management authority over the limited liability company.

(B) Significant responsibility for an aspect of the limited liability company that includes actual authority for the financial operations or financial transactions of the limited liability company.

(2) ''Agent'' means a person or entity authorized by the limited liability company to make representations to the public about the limited liability company's financial condition and who is acting within the scope of the agency when the representations are made.

(3) ''Member'' means a person as defined by subdivision (x) of Section 17001 that is a member of the limited liability company at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) ''Notify its members'' means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions

as described in paragraph (1) of subdivision (a). A notice or report filed by a limited liability company with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a) but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) ''Appropriate government agency'' means an agency on the following list that has regulatory authority with respect to the financial operations of a limited liability company:

(A) Department of Corporations.

(B) Department of Insurance.

(C) Department of Financial Institutions.

(D) Department of Managed Health Care.

(E) United States Securities and Exchange Commission.

(6) ''Actual knowledge of the limited liability company'' means the knowledge a member, officer or manager of a limited liability company actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the limited liability company's disclosure controls and procedures.

(7) ''Refuse to make a book entry'' means the intentional decision not to record an accounting transaction and all of the following conditions are satisfied:

(A) The independent auditors required recordation of an accounting transaction during the course of an audit.

(B) The audit committee of the limited liability company has not approved the independent auditor's recommendation.

(C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

(8) ''Refuse to post any notice required by law'' means an intentional decision not to post a notice required by law when all of the following conditions exist:

(A) The decision not to post the notice has not been approved by the limited liability company's audit committee.

(B) The decision is intended to give the membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(9) ''Misstate or conceal material facts from a regulatory body'' means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the limited liability company's audit committee.

(B) The decision is intended to give the membership shares in the limited liability company a greater or a less apparent market value than they really possess.

(10) ''Material false statement or omission'' means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) ''Officer'' means a person appointed pursuant to Section 17154, except an officer of a specified subsidiary limited liability company who is not also an officer of the parent limited liability company.

(f) This section only applies to limited liability companies that are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (P.L. 107-204; 15 U.S.C. Sec. 7201 and following).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

CHAPTER 478

An act to amend Section 14509.4 of the Public Resources Code, relating to beverage container recycling.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 14509.4 of the Public Resources Code is amended to read:

14509.4. ''Convenience zone'' means all of the following:

(a) The area within a one-half mile radius of a supermarket.

(b) (1) Notwithstanding subdivision (a), in a rural region, as identified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571, the department may, upon petition by an interested person, increase a convenience zone that meets the requirements of paragraph (2) to include the area within a three-mile radius of a supermarket, if the expanded convenience zone would then be served by a certified recycling center or location.

(2) Paragraph (1) applies only to a convenience zone that is otherwise not being served by a certified recycling center or location meeting the

requirements of Section 14571 or is exempted by the department pursuant to Section 14571.8.

CHAPTER 479

An act to amend Section 42310 of, and to add Sections 39011.5, 39023.3, 40724, 40724.5, 40724.6, 40724.7, 40731, 42301.16, 42301.17, 42301.18, and 44559.9 to, the Health and Safety Code, relating to air quality.

[Approved by Governor September 22, 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) Agricultural operations necessary for growing crops or raising animals are a significant source of directly emitted particulates, and precursors of ozone and fine particulate matter. These emissions have a significant adverse effect on the ability of areas of the state, including, but not limited to, the San Joaquin Valley, to achieve health-based state and federal ambient air quality standards.

(2) Since 1999, the agriculture industry has reduced emissions of oxides of nitrogen (NO_x) by more than 2000 tons per year, emissions of particulate matter of 10 microns in diameter (PM 10) by more than 500 tons per year, and emissions of volatile organic compounds (VOCs) from agricultural chemicals by more than 20 percent. According to the state board, however, agricultural sources of air pollution still contribute twenty-six percent of the smog-forming emissions in the San Joaquin Valley.

(3) In the San Joaquin Valley, a large portion of the sources of particulate emissions are areawide sources whose emissions are directly related to growth in population and the resulting vehicle miles traveled. According to the State Air Resources Board, however, agricultural sources of air pollution account for over fifty percent of the directly emitted particulate air pollution generated in the valley during the fall, amounting to over 170 tons per day of emissions.

(4) All parties living or operating a business in an area that has been classified as being a nonattainment area with respect to the attainment of federal or state ambient air quality standards share the responsibility of reducing emissions from air pollutants.

(5) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) prohibits the state from adopting emission standards or limitations less stringent than those established under the federal act, including limitations on emissions from agricultural sources.

(6) Division 26 (commencing with Section 39000) of the Health and Safety Code establishes numerous policies and programs to reduce air pollutants for the protection of public health.

(7) The purpose of the act adding this section is to establish a new set of programs at the state and regional levels to reduce air emissions from agricultural sources in order to protect public health and the environment.

(b) It is therefore the intent of the Legislature to require the State Air Resources Board and air quality management districts and air pollution control districts in the state to regulate stationary, mobile, and area sources of agricultural air pollution.

SEC. 2. Section 39011.5 is added to the Health and Safety Code, to read:

39011.5. (a) ''Agricultural source of air pollution'' or ''agricultural source'' means a source of air pollution or a group of sources used in the production of crops, or the raising of fowl or animals located on contiguous property under common ownership or control that meets any of the following criteria:

(1) Is a confined animal facility, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, milking parlor, or system for the collection, storage, treatment, and distribution of liquid and solid manure, if domesticated animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes and feeding is by means other than grazing.

(2) Is an internal combustion engine used in the production of crops or the raising of fowl or animals, including, but not limited to, an engine subject to Article 1.5 (commencing with Section 41750) of Chapter 3 of Part 4 except an engine that is used to propel implements of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

(3) Is a Title V source, as that term is defined in Section 39053.5, or is a source that is otherwise subject to regulation by a district pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) Any district rule or regulation affecting stationary sources on agricultural operations adopted on or before January 1, 2004, is applicable to an agriculture source.

(c) Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source, over which it otherwise has jurisdiction pursuant to this division, or pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act that were in effect on or before January 1, 2003, or to exempt an agricultural source from any requirement otherwise applicable under Sections 40724 or 42301.16, based upon a finding by the district in a public hearing that the aggregate emissions from that source do not exceed a de minimus level of more than one ton of particulate matter, nitrogen oxides or volatile organic compounds per year.

SEC. 3. Section 39023.3 is added to the Health and Safety Code, to read:

39023.3. ''Fugitive emissions'' mean those emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

SEC. 4. Section 40724 is added to the Health and Safety Code, to read:

40724. (a) Each district that is designated as a serious federal nonattainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation requiring best available control measures (BACM) for sources for which those measures are applicable and best available retrofit control technology (BARCT) to reduce air pollutants from sources for which that technology is applicable for agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and for fugitive emissions from those agricultural practices a manner similar to other source categories by the earliest feasible date, but not later than January 1, 2006. The rule or regulation shall also include BACM and BARCT to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard. Each district that is subject to this subdivision shall comply with the following schedule with respect to the rule or regulation imposing BACM and BARCT:

(1) On or before September 1, 2004, notice and hold at least one public workshop for the purpose of accepting public testimony on the proposed rule or regulation.

(2) On or before July 1, 2005, adopt the final rule or regulation at a noticed public hearing.

(3) On or before January 1, 2006, commence implementation of the rule or regulation.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted

to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

SEC. 5. Section 40724.5 is added to the Health and Safety Code, to read:

40724.5. (a) By the earliest feasible date, but no later than January 1, 2007, each district that is designated a moderate federal nonattainment area for an applicable ambient air quality standard for particulate matter as of January 1, 2004, and that is not subject to the requirements of Section 40724, shall adopt and implement control measures necessary to reduce emissions from agricultural practices, including, but not limited to, tilling, discing, cultivation, and raising of animals, and from fugitive emissions in a manner similar to other source categories from those activities by the earliest feasible date. Control measures adopted and implemented pursuant to this section shall also be implemented by the district to reduce precursor emissions in a manner commensurate to other source categories that the district show cause or contribute to a violation of an ambient air quality standard.

(b) A district is not required to adopt and implement control measures pursuant to this section if it determines in a public hearing that agricultural practices do not significantly cause or contribute to a violation of state or federal standards.

(c) In adopting a rule or regulation pursuant to this section, a district shall do all of the following:

(1) Ensure the size and duration of use of an internal combustion engine subject to BARCT pursuant to this section is commensurate to the size and duration of use of internal combustion engines subject to regulation by a district or the state board regulated at other stationary sources.

(2) Ensure that BARCT established pursuant to this section for an internal combustion engine is similar to BARCT for other stationary source engines subject to regulation by a district or the state board.

(3) Ensure that the cost-effectiveness of BARCT for an internal combustion engine subject to this section is similar to the cost-effectiveness of BARCT for other internal combustion engines subject to regulation by a district or the state board.

(4) Compare the cost-effectiveness of BARCT for an internal combustion engine subject to this section to the list of available and proposed control measures prepared pursuant to Section 40922.

(5) Adopt control measures pursuant to this section in order of their cost-effectiveness, unless a district determines that a different order of adoption is necessary due to the enforceability, public acceptability, or

technological feasibility of a given control measure, or to expeditiously attain or maintain a national or state ambient air quality standard.

(6) Except as otherwise provided under this section, ensure that any rule or regulation adopted pursuant to this section complies with all applicable requirements of this division, including, but not limited to, any applicable requirements established pursuant to Sections 40703, 40727, 40728.5, and 40920.6.

(7) Hold at least one public meeting that is conducted at a time and location that the district determines is convenient to the public at which the district reviews the comparison prepared pursuant to paragraph (4).

(d) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect the adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

(e) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 6. Section 40724.6 is added to the Health and Safety Code, to read:

40724.6. (a) On or before July 1, 2005, the state board shall review all available scientific information, including, but not limited to, emissions factors for confined animal facilities, and the effect of those facilities on air quality in the basin and other relevant scientific information, and develop a definition for the source category of a ''large confined animal facility'' for the purposes of this section. In developing that definition, the state board shall consider the emissions of air contaminants from those sources as they may affect the attainment and maintenance of ambient air quality standards.

(b) Not later than July 1, 2006, each district that is designated as a federal nonattainment area for ozone as of January 1, 2004, shall adopt, implement, and submit for inclusion in the state implementation plan, a rule or regulation that requires the owner or operator of a large confined animal facility, as defined by the state board pursuant to subdivision (a),

to obtain a permit from the district to reduce, to the extent feasible, emissions of air contaminants from the facility.

(c) A district may require a permit for a large confined animal facility with actual emissions that are less than one-half of any applicable emissions threshold for a major source in the district for any air contaminant, including, but not limited to, fugitive emissions in a manner similar to other source categories, if prior to imposing that requirement the district makes both of the following determinations in a public hearing:

(1) A permit is necessary to impose or enforce reductions in emissions of air pollutants that the district show cause or contribute to a violation of a state or federal ambient air quality standard.

(2) The requirement for a source or category of sources to obtain a permit would not impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

(d) The rule or regulation adopted pursuant to subdivision (b) shall do all of the following:

(1) Require the owner or operator of each large confined animal facility to submit an application for a permit within six months from the date the rule or regulation is adopted by the district that includes both of the following:

(A) The information that the district determines is necessary to prepare an emissions inventory of all regulated air pollutants emitted from the operation, including, but not limited to, precursor and fugitive emissions, using emission factors approved by the state board in a public hearing.

(B) An emissions mitigation plan that demonstrates that the facility will use reasonably available control technology in moderate and serious nonattainment areas, and best available retrofit control technology in severe and extreme nonattainment areas, to reduce emissions of pollutants that contribute to the nonattainment of any ambient air quality standard, and that are within the district's regulatory authority.

(2) Require the district to act upon an application for permit submitted pursuant to paragraph (1) within six months of a completed application, as determined by the district.

(3) Require the owner or operator to implement the plan contained in the permit approved by the district, and shall establish a reasonable period, of not more than three years, after which each permit shall be reviewed by the district and updated to reflect changes in the operation or the feasibility of mitigation measures. The updates required by this paragraph are not required to be submitted for inclusion into the state implementation plan.

(4) Establish a reasonable compliance schedule for facilities to implement control measures within one year of the date on which the permit is approved by the district, and shall provide for 30 days public notice and comment on any draft permit.

(d) Prior to adopting a rule or regulation pursuant to subdivision (b), a district shall, to the extent data are available, perform an assessment of the impacts of the rule or regulation. The district shall consider the impacts of the rule or regulation in a public hearing, and make a good faith effort to minimize any adverse impacts. The assessment shall include all of the following:

(1) The category of sources affected, including, but not limited to, the approximate number of affected sources, and the size of those sources.

(2) The nature and quantity of emissions from the category, and the significance of those emissions in adversely affecting public health and the environment and in causing or contributing to the violation of a state or federal ambient air quality standard.

(3) The emission reduction potential.

(4) The impact on employment in, and the economy of, the region affected.

(5) The range of probable costs to affected sources and businesses.

(6) The availability and cost-effectiveness of alternatives.

(7) The technical and practical feasibility.

(8) Any additional information on impacts that is submitted to the district board for consideration.

(e) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(f) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Section 40703, 40727, and 40728.5.

(g) A permitholder may appeal any district determination or decision required by this section pursuant to Section 42302.1, in addition to any other applicable remedy provided by law.

(h) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Sections 40724 and 40724.5.

(i) Nothing in this section limits the authority of a district to regulate a source including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this

section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

SEC. 7. Section 40724.7 is added to the Health and Safety Code, to read:

40724.7. (a) A district that is designated as being in attainment for the federal ambient air standard for ozone shall adopt a rule or regulation as described in Section 40724.6 shall fulfill both of the following conditions:

(1) The regulation shall be adopted not later than July 1, 2006, unless a district board makes a determination in a public hearing, based on substantial scientific evidence in the record, that large confined animal facilities will not contribute to a violation of any state or federal ambient air quality standard.

(2) The regulation may not be submitted for inclusion in the state implementation plan.

(b) Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(c) In adopting a rule or regulation pursuant to this section, a district shall comply with all applicable requirements of this division, including, but not limited to, the requirements established pursuant to Section 40703, 40727, and 40728.5.

(d) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Section 40724.

(e) The rule or regulation adopted by a district pursuant to this section is not required to be submitted for inclusion into the state implementation plan.

SEC. 8. Section 40731 is added to the Health and Safety Code, to read:

40731. In order to assist in the development of the BACM, RACM, and BARCT measures specified in Sections 40724, 40724.5, and 40724.6, and to reduce or eliminate emissions of regulated air pollutants and their precursors, the California Air Pollution Control Officers Association, in consultation with the state board and other interested parties, shall, not later than January 1, 2005, develop a clearinghouse of

available control measures and strategies for agricultural sources of air pollution and emissions from agricultural operations, including, but not limited to, the following sources:

(a) Operations that create fugitive dust emissions, including, but not limited to, discing, tilling, material handling and storage, and travel on unpaved roads.

(b) Confined animal facilities, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, or milking parlor, including, but not limited to, a system for the collection, storage, treatment, and distribution of liquid or solid manure from domestic animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks, if those animals are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes, and feeding is by means other than grazing.

(c) Internal combustion engines used in the production of crops or the raising of animals or fowl, except an engine that is used to propel an implement of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003.

(d) Other equipment, operations, or activities associated with the growing of crops or the raising of fowl or animals, that emit, or cause to be emitted, any regulated air pollutant, or any precursor to any regulated air pollutant.

SEC. 9. Section 42301.16 is added to the Health and Safety Code, to read:

42301.16. (a) In addition to complying with the requirements of this chapter, a permit system established by a district pursuant to Section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title V (42 U.S.C. Sec. 7661 et seq.) of the federal Clean Air Act is required by district regulation to obtain a permit in a manner that is consistent with the federal requirements.

(b) Except as provided in subdivision (c), a district shall require an agricultural source of air pollution to obtain a permit unless it makes all of the following findings in a public hearing:

(1) The source is subject to a permit requirement pursuant to Section 40724.6.

(2) A permit is not necessary to impose or enforce reductions of commissions of air pollutants that the district show cause or contribute to the violation of state or federal ambient air quality standard.

(3) The requirement for the source or category of sources to obtain a permit would impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

(c) Prior to requiring a permit for an agricultural source of air pollution with actual emissions that are less than one-half of any applicable emissions threshold for a major source in the district, for any air contaminant, but excluding fugitive dust, a district shall, in a public hearing, make all of the following findings:

(1) The source is not subject to a permit requirement pursuant to Section 40724.6.

(2) A permit is necessary to impose or enforce reductions of emission of air pollutants that the district show cause or contribute to a violation of a state or federal ambient air quality standard.

(3) The requirement for a source or category of sources to obtain a permit would not impose a burden on those sources that is significantly more burdensome than permits required for other similar sources of air pollution.

SEC. 10. Section 42301.17 is added to the Health and Safety Code, to read:

42301.17. (a) A district may adopt by regulation a program under which the district does not require a permit to be obtained by an agricultural source of air pollution that the district may otherwise require to obtain a permit if the owner or operator of the source has taken the following actions to reduce emissions from the source:

(1) Removed all internal combustion engines used in the production of crops or the raising of fowl or animals, except an engine that is used to propel implements of husbandry, at the source and replaced them with engines that meet or exceed the most stringent standards adopted by the state board and the United States Environmental Protection Agency for new internal combustion engines.

(2) Reduced or mitigated emissions from all agricultural activities, including, but not limited to, tilling, discing, cultivation, the raising of livestock and fowl, and similar activities, to a level that the district determines does not cause, or contribute to, a violation of a state or federal ambient air standard, toxic air contaminant, or other air emission limitation.

(3) Reduced or mitigated all emissions from any farm equipment, underground petroleum fuel tanks, or other similar equipment used in agricultural activities to a level that the district determines does not cause or contribute to a violation of a state or federal ambient air standard, toxic air contaminant, or other air emission limitation.

(4) Complied with any other conditions required by state or federal law or district rule or regulation for the source.

(b) Subdivision (a) does not apply to those permits required to be issued pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title V (42 U.S.C. Sec. 7661 et seq.).

SEC. 11. Section 42301.18 is added to the Health and Safety Code, to read:

42301.18. (a) Any agricultural source that existed prior to January 1, 2004, that becomes subject to a permit requirement pursuant to a district rule or regulation that was adopted prior to that date shall be permitted as an existing source and not as a new source.

(b) Any agricultural source that is an existing source pursuant to subdivision (a) shall be permitted by the district based upon its maximum potential to emit air contaminants, to the extent that level can be determined, as of January 1, 2004.

(c) A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.

SEC. 12. Section 42310 of the Health and Safety Code is amended to read:

42310. (a) A permit shall not be required for any of the following:

(1) Any vehicle.

(2) Any structure designed for and used exclusively as a dwelling for not more than four families.

(3) An incinerator used exclusively in connection with a structure described in subdivision (b).

(4) Barbecue equipment that is not used for commercial purposes.

(5) (A) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

(B) As used in this subdivision, maintenance does not include operation.

(b) Nothing in this section shall affect any requirements imposed on a district or a source of air pollution, including, but not limited to, an agricultural source, pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 13. Section 44559.9 is added to the Health and Safety Code, to read:

44559.9. The authority shall expand the Capital Access Loan Program established by this article to include outreach to financial institutions that service agricultural interests in the state for the purpose of funding air pollution control measures.

SEC. 14. The provisions of the act adding this section are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because

in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other 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 480

An act to repeal Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, and to add Section 41606 to the Health and Safety Code, relating to air quality.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code is repealed.

SEC. 2. Section 41606 is added to the Health and Safety Code, to read:

41606. (a) (1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.

(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003–04 fiscal year.

(b) For purposes of this section:

(1) ''Qualified agricultural biomass'' means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural

residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) ''Facility'' means any facility located in California that meets all of the following criteria:

(A) As of July 1, 2003, converted and continues to convert qualified agricultural biomass to energy.

(B) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit, as determined by the air pollution control district or air quality management district in which the facility operates.

(C) Demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A ''significant net increase'' means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the implementation of the Agricultural Biomass-to-Energy Incentive Grant Program pursuant to former Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as repealed by the act adding this section.

(c) (1) The State Energy Resources Conservation and Development Commission shall, upon determining that a facility is eligible for funding, provide incentives to the facility, consistent with this section.

(2) The State Energy Resources Conservation and Development Commission shall complete the issuance of incentive payments for qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, within 90 days of the effective date of this section.

(3) In providing incentives pursuant to this section, the State Energy Resources Conservation and Development Commission shall provide incentive payments in the amount of ten dollars ($10) for each ton of qualified agricultural biomass received by a facility and converted into energy. The State Energy Resources Conservation and Development Commission may increase the incentive payment for types or sources of qualified agricultural biomass that require greater incentives to achieve meaningful increases in usage by facilities, as determined by the State Energy Resources Conservation and Development Commission.

(4) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive

funded through electricity surcharges, except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.

(5) The State Energy Resources Conservation and Development Commission, in consultation with the California Environmental Protection Agency, may adopt guidelines governing the incentives authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. Adoption of guidelines shall not delay the timing of the payment of incentives that are required by paragraph (2).

(6) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those contained in this section, and any guidelines adopted pursuant to this section, were a substantial factor in making the award. Any actions taken by an applicant to apply for, become, or remain eligible for an award, shall not be the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(d) Facilities receiving incentive payments pursuant to this section are not eligible to receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. Generators or suppliers of qualified agricultural biomass may not receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. For purposes of this section, ''emission reduction credits'' means a credit for a reduction in the emission of an air contaminant that is banked and is available to offset increases in emissions pursuant to Section 40709, and the regulations adopted pursuant to that section.

SEC. 3. The State Energy Resources Conservation and Development Commission shall allocate six million dollars ($6,000,000) from the Renewable Resource Trust Fund, as provided in Provision 1 of Item 3360-001-0382 of the Budget Act of 2003, Chapter 157 of the Statutes of 2003, for the 2003–04 fiscal year, to provide incentives to a facility, as defined in Section 41606 of the Health and Safety Code, to increase its utilization of qualified agricultural biomass as provided in Section 41606 of the Health and Safety Code.

SEC. 4. This act shall become operative only if Senate Bill 705 of the 2003–04 Regular Session is chaptered and becomes effective.

CHAPTER 481

An act to add Sections 41855.5 and 41855.6 to the Health and Safety Code, relating to air quality.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 41855.5 is added to the Health and Safety Code, to read:

41855.5. (a) Notwithstanding any other provision of law, no permit may be issued to a person to burn any of the following categories of agricultural waste within the jurisdiction of the San Joaquin Valley Unified Air Pollution Control District, commencing on the following dates:

(1) Commencing June 1, 2005, for field crops, prunings, and weed abatement.

(2) Commencing June 1, 2007, for orchard removals.

(3) Commencing June 1, 2010, for other materials, vineyard removals, and surface harvested prunings.

(b) The San Joaquin Valley Unified Air Pollution Control District, in consultation with the University of California Cooperative Extension, shall develop and adopt, not later than June 1, 2005, rules establishing best management practices for the control of other weeds and maintenance. The rules adopted pursuant to this subdivision shall be operative not later than June 1, 2006.

(c) For the purposes of this section, the following terms have the following meanings:

(1) ''Field crops'' means any of the following crops:

(A) Alfalfa.

(B) Asparagus.

(C) Barley stubble.

(D) Beans.

(E) Corn.

(F) Cotton.

(G) Flower straw.

(H) Hay.

(I) Lemon grass.

(J) Oat stubble.
(K) Other field crops, as determined by the state board.
(L) Pea vines.
(M) Peanuts.
(N) Rice stubble.
(O) Safflower.
(P) Sugar cane.
(Q) Vegetable crops.
(R) Wheat stubble.

(2) ''Orchard removals'' includes, but is not limited to, any of the following:
(A) Orchard removal matter.
(B) Stumps.
(C) Untreated sticks.

(3) ''Other materials'' includes, but is not limited to, any of the following:
(A) Brooder paper.
(B) Deceased goats.
(C) Diseased bee hives.

(4) ''Other weeds and maintenance'' includes, but is not limited to, any of the following:
(A) Ditch bank work.
(B) Canal bank work.
(C) Dodder weed.
(D) Star thistle.
(E) Tumbleweed.
(F) Noxious weeds.
(G) Pesticide sacks.
(H) Fertilizer sacks.

(5) ''Prunings'' means prunings from any of the following:
(A) Apple crops.
(B) Apricot crops.
(C) Avocado crops.
(D) Bushberry crops.
(E) Cherry crops.
(F) Christmas trees.
(G) Citrus crops.
(H) Date crops.
(I) Eucalyptus crops.
(J) Fig crops.
(K) Kiwi crops.
(L) Nectarine crops.
(M) Nursery prunings.
(N) Olive crops.

(O) Other prunings, as determined by the state board.
(P) Pasture or corral trees.
(Q) Peach crops.
(R) Pear crops.
(S) Persimmon crops.
(T) Pistachio crops.
(U) Plum crops.
(V) Pluot crops.
(W) Pomegranate crops.
(X) Prune crops.
(Y) Quince crops.
(Z) Rose prunings.

(6) ''Surface harvested prunings'' includes, but is not limited to, any of the following:

(A) Almond prunings.
(B) Walnut prunings.
(C) Pecan prunings.
(D) Grape vines.
(E) Vineyard removal materials.

(7) ''Vineyard materials'' includes, but is not limited to, any of the following:

(A) Grape canes.
(B) Raisin trays.

(8) ''Weed abatement'' includes, but is not limited to, any of the following:

(A) Berms.
(B) Bermuda grass.
(C) Fence rows.
(D) Grass.
(E) Pasture.
(F) Ponding or levee banks.

(d) (1) The San Joaquin Valley Unified Air Pollution Control District shall develop and adopt, by January 1, 2005, rules to regulate the burning of diseased crops. The rules shall become operative no later than June 1, 2005. The rules shall provide for the issuance of a conditional crop burning permit if all of the following criteria are met:

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

(B) The applicant has not been cited for a violation of burning rules or regulations in the past 3 years, unless the violation was of a de minimis nature, as determined by the district and the county agricultural commissioner.

(C) The county agricultural commissioner has determined all of the following:

(i) During the growing season for that crop, there is the presence of a disease that will cause a substantial, quantifiable reduction in yield or poses a threat to the health of adjacent vines, trees, or plants in the field proposed to be burned, during the current or next growing season.

(ii) There is no economically feasible alternative means of eliminating the disease other than burning.

(2) A conditional crop burning permit shall authorize the burning of only the identified diseased crop.

(3) The holder of a permit may not transfer, sell, or trade the permit to any other individual.

(4) A citation for a violation of burning rules or regulations may be appealed to the San Joaquin Air Pollution Control District Hearing Board.

SEC. 2. Section 41855.6 is added to the Health and Safety Code, to read:

41855.6. The district may postpone the commencement dates set forth in subdivision (a) of Section 41855.5 for any category of agricultural waste or crop described if all of the following applies:

(a) The district determines that there is no economically feasible alternative means of eliminating the waste.

(b) The district determines that there is no long-term federal or state funding commitment for the continued operation of biomass facilities in the San Joaquin Valley or development of alternatives to burning.

(c) The district determines that the continued issuance of permits for that specific category or crop will not cause, or substantially contribute to, a violation of an applicable federal ambient air quality standard.

(d) The State Air Resources Board concurs with the district's determinations pursuant to this section.

SEC. 3. The Legislature finds and declares that, due to the unique circumstances applicable to agricultural waste and its impacts on air quality in the San Joaquin Valley, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 4. 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.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other 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 482

An act to amend Section 44062.1 of the Health and Safety Code, to add Section 1463.15 to the Penal Code, and to amend Section 42001.2 of, and to add Section 2814.1 to, the Vehicle Code, relating to air pollution.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 44062.1 of the Health and Safety Code is amended to read:

44062.1. (a) The department shall offer a repair assistance program through entities authorized to perform referee functions.

(b) (1) The repair assistance program shall be available to the following eligible individuals:

(A) An individual, based on a maximum income level of 185 percent of the federal poverty level, as published quarterly in the Federal Register by the Department of Health and Human Services and that individual is either or both of the following:

(i) The owner of a motor vehicle that has failed a smog check inspection.

(ii) The owner of a motor vehicle who was issued a notice to correct for an alleged violation of Section 27153 or 27153.5 of the Vehicle Code involving that vehicle, if the vehicle subject to that notice has failed a smog check inspection subsequent to receiving the notice.

(B) An owner of a motor vehicle that has failed a smog check inspection and is directed to a test-only facility pursuant to Section 44010.5 or 44014.7.

(2) The department shall offer repair cost assistance, funded by the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091, to individuals based on the cost-effectiveness and air quality benefit of the needed repair. Repair assistance may include retesting costs and the costs of repairs to remedy the violation of Section 27153 or 27153.5 of the Vehicle Code.

(3) An applicant for repair assistance shall file an application on a form prescribed by the department and shall certify under penalty of perjury that the applicant meets the applicable eligibility standards.

(4) Verification of low-income eligibility shall be based on at least one form of documentation, as determined by the department, including, but not limited to, (A) an income tax return, (B) an employment warrant, or (C) a form of public assistance verification.

(c) The repair assistance program shall be funded by the High Polluter Repair or Removal Account.

(d) Repairs to motor vehicles that fail smog check inspections and are subsidized by the state through the program shall be performed at a repair station licensed and certified pursuant to Sections 44014 and 44014.2. Repair shall be based upon a preapproved list of repairs for cost-effective emission reductions or repairs to remedy a violation of Section 27153 or 27153.5 of the Vehicle Code.

(e) The qualified low-income motor vehicle owner receiving repair assistance pursuant to this section shall contribute a copayment, as determined by the department as specified in Section 44017.1, either in cash, or in emissions-related partial repairs as verified by a test-only station pursuant to paragraph (2) of subdivision (c) of Section 44015, or a combination thereof. For an owner of a motor vehicle described in subparagraph (B) of paragraph (1) of subdivision (b), the department shall impose a copayment at least equivalent to the amount imposed on a low-income individual receiving assistance under this section. If the repair cost exceeds the applicable repair cost limit, the department shall inform a motor vehicle owner of all options for compliance at the time of testing and repair.

(f) The department may increase its contribution toward the repair of a motor vehicle under this program in excess of the amount authorized for the repair of a high-polluter pursuant to paragraph (1) of subdivision (b) of Section 44094, if the department determines that the expenditure is cost-effective.

(g) The department shall collect data from the program to provide information on how to improve the program. Data collection shall include all of the following:

(1) The number of motor vehicle owners that are eligible for repair assistance.

(2) The number of eligible motor vehicle owners that use repair assistance funds.

(3) The potential for fraud.

(4) The average repair bills.

(5) The types of repairs being done.

(6) The amount of partial repairs done prior to receipt of repair assistance.

(7) The emissions benefits of providing repair assistance.

(h) The department shall collect data and develop information and shall report to the Legislature on or before April 1, 1999, on eligibility criteria, program participation, the cost of vehicle repairs, and the funding resources needed to implement the program.

(i) For purposes of this section, ''low-income motor vehicle owner'' means a person whose income does not exceed 185 percent of the federal poverty level.

SEC. 2. Section 1463.15 is added to the Penal Code, to read:

1463.15. Notwithstanding Section 1463, if a county board of supervisors establishes a combined vehicle inspection and sobriety checkpoint program under Section 2814.1 of the Vehicle Code, thirty-five dollars ($35) of the money deposited with the county treasurer under Section 1463.001 and collected from each fine and forfeiture imposed under subdivision (b) of Section 42001.2 of the Vehicle Code shall be deposited in a special account to be used exclusively to pay the cost incurred by the county for establishing and conducting the combined vehicle inspection and sobriety checkpoint program. The money allocated to pay the cost incurred by the county for establishing and conducting the combined checkpoint program pursuant to this section may only be deposited in the special account after a fine imposed pursuant to subdivision (b) of Section 42001.2, and any penalty assessment thereon, has been collected.

SEC. 3. Section 2814.1 is added to the Vehicle Code, to read:

2814.1. (a) A board of supervisors of a county may, by ordinance, establish, on highways under its jurisdiction, a combined vehicle inspection and sobriety checkpoint program to check for violations of Sections 27153 and 27153.5 and to identify drivers who are in violation of Section 23140 or 23152. The program shall be conducted by the local agency or department with the primary responsibility for traffic law enforcement.

(b) A driver of a motor vehicle shall stop and submit to an inspection conducted under subdivision (a) when signs and displays are posted requiring that stop.

(c) A county that elects to conduct the combined program described under subdivision (a) may fund that program through fine proceeds deposited with the county under Section 1463.15 of the Penal Code.

SEC. 4. Section 42001.2 of the Vehicle Code is amended to read:

42001.2. (a) A person convicted of an infraction for a violation of Section 27153.5 with a motor vehicle having a manufacturer's maximum gross vehicle weight rating of 6,001 or more pounds is punishable by a fine for the first offense of not less than two hundred fifty dollars ($250) and not more than two thousand five hundred dollars ($2,500), and for a second or subsequent offense within one year of not

less than five hundred dollars ($500) and not more than five thousand dollars ($5,000).

(b) A person convicted of an infraction for a second or subsequent violation of Section 27153, or a second or subsequent violation of 27153.5, with a motor vehicle having a manufacturer's maximum gross vehicle weight rating of less than 6,001 pounds, is punishable by a fine of not less than one hundred thirty-five dollars ($135) nor more than two hundred eighty-five dollars ($285).

(c) Notwithstanding Section 40616, the penalties in subdivision (b) apply when a person is guilty of willfully violating a written promise to correct, or willfully failing to deliver proof of correction, as prescribed in Section 40616, when an offense described in subdivision (b) was the violation for which the notice to correct was issued and the person was previously convicted of the same offense, except that costs of repair shall be limited to those specified in Section 44017 of the Health and Safety Code.

(d) Notwithstanding any other provision of law and subject to Section 1463.15 of the Penal Code, revenues collected from fines and forfeitures imposed under this section shall be allocated as follows: 15 percent to the county in which the prosecution is conducted, 10 percent to the prosecuting agency, 25 percent to the enforcement agency, except the Department of the California Highway Patrol, and 50 percent to the air quality management district or air pollution control district in which the infraction occurred, to be used for programs to regulate or control emissions from vehicular sources of air pollution. If the enforcement agency is the Department of the California Highway Patrol, the revenues shall be allocated 25 percent to the county in which the prosecution is conducted, 25 percent to the prosecuting agency, and 50 percent to the air quality management district or air pollution control district in which the infraction occurred. If no prosecuting agency is involved, the revenues that would otherwise be allocated to the prosecuting agency shall instead be allocated to the air quality management district or air pollution control district in which the infraction occurred.

(e) For the purposes of subdivisions (a), (b), and (c), a second or subsequent offense does not include an offense involving a different motor vehicle.

CHAPTER 483

An act to add Chapter 5.7 (commencing with Section 40600) to Part 3 of Division 26 of the Health and Safety Code, to add Section 9250.16

to the Vehicle Code, and to repeal Section 5 of Chapter 915 of the Statutes of 1994, relating to air quality.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 5 of Chapter 915 of the Statutes of 1994 is repealed.

SEC. 2. Chapter 5.7 (commencing with Section 40600) is added to Part 3 of Division 26 of the Health and Safety Code, to read:

CHAPTER 5.7. SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

40600. (a) The San Joaquin Valley Unified Air Pollution Control District formed by the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare pursuant to Chapter 3 (commencing with Section 40150) of Part 3 of Division 26 of the Health and Safety Code, and consisting of the Counties of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare, and that portion of the County of Kern that is within the San Joaquin Valley Air Basin, is a single integrated agency with all staff under one centralized management structure that is able to implement programs on a basinwide basis, and has all of the following:

(1) An individual air pollution control officer who is responsible for the issuance of all permits by the unified district.

(2) A single budget for the unified district with resources allocated based on the program needs of the San Joaquin Valley Air Basin.

(3) A uniform fee structure.

(4) Three hearing boards established pursuant to Section 40800 of the Health and Safety Code. One hearing board shall serve the northern region, one shall serve the central region, and one shall serve the southern region, as defined by the unified district board. Identical policies governing the operation of each hearing board shall be established by the unified district board and shall be binding upon each hearing board.

(5) A citizen's advisory committee.

(b) Rules and regulations adopted by the San Joaquin Valley Unified Air Pollution Control District are binding on all counties within the unified district. The unified district shall enforce all permits issued by the unified district and all permits issued by the individual county districts prior to formation of the unified district. The unified district shall review, revise, adopt, and implement any air pollution control plans

required within the San Joaquin Valley Air Basin by state and federal law.

(c) Notwithstanding any other provision of law, the San Joaquin Valley Unified Air Pollution Control District shall be governed by a district board composed of 11 voting members, appointed as follows:

(1) Eight members, one of whom shall be appointed by each of the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare. The board of supervisors of each of those counties shall, by majority vote, appoint one of its members to serve as a member of the district governing board.

(2) Three city members appointed by the cities within the territory of the unified district. There shall not be more than one city member selected from one county. One city member shall be selected from the northern region, one from the central region, and one from the southern region of the district. Of the three city members, one shall be from a city having a population of less than 20,000, one shall be from a city having a population of not less than 20,000 and not more than 50,000, and one shall be from a city having a population of more than 50,000.

40601. The district board may adopt rules and regulations by the earliest feasible date that do all of the following:

(a) Require the use of best available control technology for new and modified sources, and the use of best available retrofit control technology for existing sources.

(b) Promote the use of cleaner burning alternative fuels.

(c) Encourage and facilitate ridesharing for commuter trips into, out of, and within the district.

(d) Require all businesses described below within the district that employ at least 100 people to establish a rideshare program:

(1) That are located within an incorporated city with a population of at least 10,000, as determined by the Demographic Research Unit of the Department of Finance.

(2) That are located within an incorporated city with a population of less than 10,000, as determined by the Demographic Research Unit of the Department of Finance, or that are located within the unincorporated area of a county, of which more than 50 percent of their employees work at least 2,040 hours per year.

40602. (a) The district shall expand the office of small business, established by the district, to include agriculture assistance, in order to provide administrative and technical services and information to small businesses, farmers, and the public.

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

(1) Facilitate and encourage compliance with district rules and regulations by small businesses and farmers.

(2) Assist small businesses and farmers in applying for permits and variances, and facilitate the participation of small businesses and farmers in the development of rules and regulations and in other proceedings of the district.

(3) Provide information on the public health, environmental, and economic effects of district rules and regulations on small businesses and farmers in the district.

(4) Make available to small businesses and farmers information regarding alternative processes, cleaner fuels and solvents, and low-cost financing for air pollution control equipment.

40603. (a) The district shall establish expedited permit review and project assistance mechanisms for facilities or projects that are directly related to research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies.

(b) The mechanisms shall include all of the following:

(1) The issuance of consolidated permits, for both construction and operation, in order to expedite the permitting process.

(2) The review and processing of permits on a facility or project basis rather than on an equipment basis, to ensure a single point of contact for the applicant and to allow entire projects to be reviewed and evaluated on a single, consolidated schedule.

(3) The establishment of a ''fast track'' permitting procedure to approve permits in an average of 30 days from receipt of all information requested by the district, except for any of the following facilities:

(A) Facilities that may emit significant amounts of toxic air contaminants.

(B) Facilities that require public notice.

(C) Facilities that require additional review to meet the requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988).

(4) The development and implementation of postconstruction enforcement procedures to ensure that new and modified sources are constructed according to permit requirements.

(5) The establishment of a liaison program to assist facilities participating in research and development, demonstration, or commercialization of electric and other clean fuel vehicle technologies with preparing permit applications, complying with other district administrative procedures, and identifying and applying for state, federal, district, or other available funds set aside for electric and other clean fuel vehicle related projects.

(c) For purposes of this chapter, ''clean fuels'' are fuels designated by the state board for use in zero emission or partial zero emission vehicles and include, but are not limited to, electricity, hydrogen, liquefied petroleum gas, methanol, and natural gas.

40604. (a) The district board shall adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions that are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.

(b) That fee schedule shall be designed to yield a sum not exceeding the estimated cost of the administration of this chapter and mitigation of emissions, and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding Section 6103 of the Government Code, an applicant that is a publicly owned utility.

40605. (a) The district board shall adopt a surcharge on the registration fees applicable to all motor vehicles registered in those counties within the district, as specified in Section 9250.16 of the Vehicle Code.

(b) Fees generated by the surcharge imposed pursuant to Section 9250.16 of the Vehicle Code shall only be used to reduce emissions from vehicular sources, including, but not limited to, the following activities:

(1) The establishment of a clean fuels program.

(2) The adoption and implementation of motor vehicle use reduction measures.

(c) No more than 2 percent of the funds collected pursuant to the surcharge shall be used by the district for administrative expenses.

(d) The district board shall adopt accounting procedures to ensure that revenues from motor vehicle registration fees are not commingled with other program revenues.

40606. The district board has the authority to monitor emissions from all stationary agricultural pumps in the district, including, but not limited to, those designated by the federal Environmental Protection Agency as ''nonroad'' engines that are subject to the requirements of Title II of the federal Clean Air Act (42 U.S.C. Sec. 7521 et seq.).

SEC. 3. Section 9250.16 is added to the Vehicle Code, to read:

9250.16. (a) In addition to any other fees specified in this code, the Health and Safety Code, and the Revenue and Taxation Code, a surcharge of one dollar ($1) may be imposed by the San Joaquin Valley Unified Air Pollution Control District and shall be paid to the department as follows:

(1) Upon initial registration of any motor vehicle not previously registered in this state that is registered on or after the date the department begins collecting the fee.

(2) Upon renewal of registration of any motor vehicle for which the registration period expires after the date the department begins collecting the fee.

(3) This subdivision applies to any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and

Safety Code, except any vehicle that is expressly exempted under this code from the payment of registration fees. The department shall begin collecting the fee on January 1 of the fiscal year immediately following the date the department receives the request to do so from the San Joaquin Valley Unified Air Pollution Control District Board.

(b) Prior to the adoption of any surcharge pursuant to this subdivision, the San Joaquin Valley Unified Air Pollution Control District board shall approve the imposition of the surcharge through the adoption of a resolution, as specified in Section 44225 of the Health and Safety Code.

(c) The San Joaquin Valley Unified Air Pollution Control District shall pay for the costs identified by the department to establish the fee collection procedure. After deducting the on-going costs incurred by the department in collecting the fees, the department shall deposit the revenue collected pursuant to this section into the Motor Vehicle Account in the State Transportation Fund for allocation to the district. Subdivision (c) of Section 40605 of the Health and Safety Code does not apply to the costs described in this subdivision.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 484

An act to amend Sections 1102.5 and 1106 of, and to add Sections 1102.6, 1102.7, 1102.8, and 1102.9 to, the Labor Code, relating to whistleblowers.

[Approved by Governor September 22, 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 that unlawful activities of private corporations may result in damages not only to the corporation and its shareholders and investors, but also to employees of the corporation and the public at large. The damages caused by unlawful activities may be prevented by the early detection of corporate wrongdoing. The employees of a corporation are in a unique position to

report corporate wrongdoing to an appropriate government or law enforcement agency.

The Legislature finds and declares that it is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating laws enacted for the protection of corporate shareholders, investors, employees, and the general public.

It is the intent of the Legislature to protect employees who refuse to act at the direction of their employer or refuse to participate in activities of an employer that would result in a violation of law.

SEC. 2. Section 1102.5 of the Labor Code is amended to read:

1102.5. (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(d) An employer may not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars ($10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies which implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

SEC. 3. Section 1102.6 is added to the Labor Code, to read:

1102.6. In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a

preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.

SEC. 4. Section 1102.7 is added to the Labor Code, to read:

1102.7. (a) The office of the Attorney General shall maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.

(b) The Attorney General shall refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the Attorney General or appropriate government agency shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the employer identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a) or its referral to an appropriate agency under subdivision (b) may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

SEC. 5. Section 1102.8 is added to the Labor Code, to read:

1102.8. (a) An employer shall prominently display in lettering larger than size 14 pica type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7.

(b) Any state agency required to post a notice pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code shall be deemed in compliance with the posting requirement set forth in subdivision (a) if the notice posted pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code also contains the whistleblower hotline number described in Section 1102.7.

SEC. 7. Section 1106 of the Labor Code is amended to read:

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1104, and 1105, ''employee'' includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school

district, community college district, municipal or public corporation, political subdivision, or the University of California.

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 485

An act to amend Sections 101, 144, 146, and 149 of, and to add and repeal Chapter 8.2 (commencing with Section 3610) of Division 2 of, the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary and Vocational Education.

(*l*) The Structural Pest Control Board.

(m) The Bureau of Home Furnishings and Thermal Insulation.

(n) The Board of Registered Nursing.

(o) The Board of Behavioral Sciences.

(p) The State Athletic Commission.

(q) The Cemetery and Funeral Bureau.
(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The Landscape Architects Technical Committee.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The Respiratory Care Board of California.
(ab) The Acupuncture Board.
(ac) The Board of Psychology.
(ad) The California Board of Podiatric Medicine.
(ae) The Physical Therapy Board of California.
(af) The Arbitration Review Program.
(ag) The Committee on Dental Auxiliaries.
(ah) The Hearing Aid Dispensers Bureau.
(ai) The Physician Assistant Committee.
(aj) The Speech-Language Pathology and Audiology Board.
(ak) The California Board of Occupational Therapy.
(a*l*) The Osteopathic Medical Board of California.
(am) The Bureau of Naturopathic Medicine.
(an) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards, bureaus, or committees:
(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) The Bureau of Naturopathic Medicine.

SEC. 3. Section 146 of the Business and Professions Code is amended to read:

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) or (d) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor, or

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivisions (c) and (d) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Sections 2052 and 2054.
(2) Section 2630.
(3) Section 2903.
(4) Section 3660.

(5) Sections 3760 and 3761.
(6) Section 4080.
(7) Section 4825.
(8) Section 4935.
(9) Section 4980.
(10) Section 4996.
(11) Section 5536.
(12) Section 6704.
(13) Section 6980.10.
(14) Section 7317.
(15) Section 7502 or 7592.
(16) Section 7520.
(17) Section 7617 or 7641.
(18) Subdivision (a) of Section 7872.
(19) Section 8016.
(20) Section 8505.
(21) Section 8725.
(22) Section 9681.
(23) Section 9840.
(24) Subdivision (c) of Section 9891.24.
(25) Section 19049.

(d) Institutions that are required to register with the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code.

(e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

SEC. 4. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.
(2) The Funeral Directors and Embalmers Program.
(3) The Veterinary Medical Board.
(4) The Hearing Aid Dispensers Advisory Commission.
(5) The Landscape Architects Technical Committee.
(6) The California Board of Podiatric Medicine.
(7) The Respiratory Care Board of California.
(8) The Bureau of Home Furnishings and Thermal Insulation.
(9) The Bureau of Security and Investigative Services.
(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The Tax Preparers Program.
(13) The California Architects Board.
(14) The Speech-Language Pathology and Audiology Board.
(15) The Board for Professional Engineers and Land Surveyors.
(16) The Board of Behavioral Sciences.
(17) The State Board for Geologists and Geophysicists.
(18) The Structural Pest Control Board.
(19) The Acupuncture Board.
(20) The Board of Psychology.
(21) The California Board of Accountancy.
(22) The Bureau of Naturopathic Medicine.

SEC. 5. Chapter 8.2 (commencing with Section 3610) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 8.2. NATUROPATHIC DOCTORS ACT

Article 1. General Provisions

3610. This chapter may be cited as the Naturopathic Doctors Act.

3612. The Bureau of Naturopathic Medicine is hereby created within the Department of Consumer Affairs.

3613. The following definitions apply for the purposes of this chapter:

(a) ''Bureau'' means the Bureau of Naturopathic Medicine within the Department of Consumer Affairs.

(b) ''Naturopathic childbirth attendance'' means the specialty practice of natural childbirth by a naturopathic doctor that includes the management of normal pregnancy, normal labor and delivery, and the normal postpartum period, including normal newborn care.

(c) ''Naturopathic medicine'' means a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease.

(d) ''Naturopathic doctor'' means a person who holds an active license issued pursuant to this chapter.

(e) ''Naturopathy'' means a noninvasive system of health practice that employs natural health modalities, substances, and education to promote health.

(f) ''Prescription drug'' means any drug defined by Section 503(b) of the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 353) if its label is required to bear the statement ''RX only.''

3615. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application.

Article 2. Administration

3620. The bureau shall enforce and administer the provisions of this chapter.

3622. The bureau shall adopt regulations in order to carry out the purposes of this chapter.

3623. (a) The bureau shall approve a naturopathic medical education program accredited by the Council on Naturopathic Medical Education or an equivalent federally recognized accrediting body for the

naturopathic medical profession that has the following minimum requirements:

(1) Admission requirements that include a minimum of three-quarters of the credits required for a bachelor's degree from a regionally accredited or preaccredited college or university or the equivalency, as determined by the council.

(2) Program requirements for its degree or diploma of a minimum of 4,100 total hours in basic and clinical sciences, naturopathic philosophy, naturopathic modalities, and naturopathic medicine. Of the total requisite hours, not less than 2,500 hours shall consist of academic instruction, and not less than 1,200 hours shall consist of supervised clinical training approved by the naturopathic medical school.

(b) A naturopathic medical education program in the United States shall offer graduate-level full-time studies and training leading to the degree of Doctor of Naturopathy or Doctor of Naturopathic Medicine. The program shall be an institution, or part of an institution of, higher education that is either accredited or is a candidate for accreditation by a regional institutional accrediting agency recognized by the United States Secretary of Education and the Council on Naturopathic Medical Education, or an equivalent federally recognized accrediting body for naturopathic doctor education.

(c) To qualify as an approved naturopathic medical school, a naturopathic medical program located in Canada or the United States shall offer a full-time, doctoral-level, naturopathic medical education program with its graduates being eligible to apply to the bureau for licensure and to the North American Board of Naturopathic Examiners that administers the naturopathic licensing examination.

3624. (a) The bureau may grant a certificate of registration to practice naturopathic medicine to a person who does not hold a naturopathic doctor's license under this chapter and is offered a faculty position by the dean of a naturopathic medical education program approved by the bureau, if all of the following requirements are met to the satisfaction of the bureau:

(1) The applicant furnishes documentary evidence that he or she is a United States citizen or is legally admitted to the United States.

(2) The applicant submits an application on a form prescribed by the bureau.

(3) The dean of the naturopathic medical education program demonstrates that the applicant has the requisite qualifications to assume the position to which he or she is to be appointed.

(4) The dean of the naturopathic medical education program certifies in writing to the bureau that the applicant will be under his or her direction and will not be permitted to practice naturopathic medicine

unless incident to and a necessary part of the applicant's duties as approved by the bureau.

(b) The holder of a certificate of registration issued under this section shall not receive compensation for or practice naturopathic medicine unless it is incidental to and a necessary part of the applicant's duties in connection with the holder's faculty position.

(c) A certificate of registration issued under this section is valid for two years.

3624.5. (a) This chapter does not apply to a practitioner licensed as a naturopathic doctor in another state or country who meets both of the following requirements:

(1) The practitioner is in consultation with a licensed practitioner of this state, or is an invited guest of any of the following for the purpose of professional education through lectures, clinics, or demonstrations:

(A) The California Medical Association.

(B) The California Podiatric Medical Association.

(C) The California Association of Naturopathic Physicians.

(D) A component county society of subparagraph (A), (B), or (C).

(2) The practitioner does not open an office, appoint a place to meet patients, receive calls from patients, give orders, or have ultimate authority over the care or primary diagnosis of a patient.

3625. (a) The Director of Consumer Affairs shall establish an advisory council consisting of nine members. Members of the advisory council shall include three members who are California licensed naturopathic doctors, or have met the requirements for licensure pursuant to this chapter, three members who are California licensed physicians and surgeons, and three public members.

(b) A member of the advisory council shall be appointed for a four-year term. A person shall not serve as a member of the council for more than two consecutive terms. A member shall hold office until the appointment and qualification of his or her successor, or until one year from the expiration of the term for which the member was appointed, whichever first occurs. Vacancies shall be filled by appointment for unexpired terms. The first terms of the members first appointed shall be as follows:

(1) The Governor shall appoint one physician and surgeon member, one naturopathic doctor member, and one public member, with term expirations of June 1, 2006; one physician and surgeon member with a term expiration date of June 1, 2007, one naturopathic doctor member with a term expiration date of June 1, 2008.

(2) The Senate Rules Committee shall appoint one physician and surgeon member with a term expiration of June 1, 2008, and one public member with a term expiration of June 1, 2007.

(3) The Speaker of the Assembly shall appoint one naturopathic doctor member with a term expiration of June 1, 2007, and one public member with a term expiration of June 1, 2008.

(c) (1) A public member of the advisory council shall be a citizen of this state for at least five years preceding his or her appointment.

(2) A person shall not be appointed as a public member if the person or the person's immediate family in any manner owns an interest in a college, school, or institution engaged in naturopathic education, or the person or the person's immediate family has an economic interest in naturopathy or has any other conflict of interest. ''Immediate family'' means the public member's spouse, parents, children, or his or her children's spouses.

(d) In order to operate in as cost-effective a manner as possible, the advisory council and any advisory committee created pursuant to this chapter shall meet as few times as necessary to perform its duties, and its members shall receive no compensation, travel allowances, or reimbursement for their expenses.

3626. The Director of Consumer Affairs may employ a bureau chief and other officers and employees as necessary to discharge the duties of the bureau.

3627. (a) The bureau shall establish a naturopathic formulary advisory committee to determine a naturopathic formulary based upon a review of naturopathic medical education and training.

(b) The naturopathic formulary advisory committee shall be composed of an equal number of representatives from the clinical and academic settings of physicians and surgeons, pharmacists, and naturopathic doctors.

(c) The naturopathic formulary advisory committee shall review naturopathic education, training, and practice and make specific recommendations regarding the prescribing, ordering, and furnishing authority of a naturopathic doctor and the required supervision and protocols for those functions.

(d) The bureau shall make recommendations to the Legislature not later than January 1, 2006, regarding the prescribing and furnishing authority of a naturopathic doctor and the required supervision and protocols, including those for the utilization of intravenous and ocular routes of prescription drug administration. The naturopathic formulary advisory committee and the bureau shall consult with physicians and surgeons, pharmacists, and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

3628. (a) The bureau shall establish a naturopathic childbirth attendance advisory committee to issue recommendations concerning the practice of naturopathic childbirth attendance based upon a review of naturopathic medical education and training.

(b) The naturopathic childbirth attendance advisory committee shall be composed of an equal number of representatives from the clinical and academic settings of physicians and surgeons, midwives, and naturopathic doctors.

(c) The naturopathic childbirth attendance advisory committee shall review naturopathic education, training, and practice and make specific recommendations to the Legislature regarding the practice of naturopathic childbirth attendance.

(d) The bureau shall make recommendations to the Legislature not later than January 1, 2006. The naturopathic childbirth attendance advisory committee and the bureau shall consult with physicians and surgeons, midwives, and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

Article 3. Licensure

3630. An applicant for a license as a naturopathic doctor shall file with the bureau a written application on a form provided by the bureau, that shows, to the bureau's satisfaction, compliance with all of the following requirements:

(a) The applicant has not committed an act or crime that constitutes grounds for denial of a license under Section 480, and has complied with the requirements of Section 144.

(b) The applicant has received a degree in naturopathic medicine from an approved naturopathic medical school where the degree substantially meets the educational requirements in paragraph (2) of subdivision (a) of Section 3623.

3631. An applicant for licensure shall pass the Naturopathic Physicians Licensing Examination (NPLEX) or an equivalent approved by the North American Board of Naturopathic Examiners. In the absence of an examination approved by the North American Board of Naturopathic Examiners, the bureau may administer a substantially equivalent examination.

3633. The bureau may grant a license to an applicant who is licensed and in good standing as a naturopathic doctor in another state, jurisdiction, or territory in the United States, provided the applicant has met the requirements of Sections 3630 and 3631.

3633.1. The bureau may grant a license to an applicant who meets the requirements of Section 3630, but who graduated prior to 1986, pre-NPLEX, and passed a state naturopathic licensing examination. Applications under this section shall be received no later than December 31, 2007.

3634. (a) A license issued under this chapter shall be subject to renewal biennially as prescribed by the bureau and shall expire unless

renewed in that manner. The bureau may provide by regulation for the late renewal of a license.

(b) The holder of a license under this chapter shall be required to take and pass a recertifying examination before the 10th anniversary of his or her initial licensure pursuant to this chapter. On or before July 1, 2010, the bureau shall establish standards for recertification and shall create a recertifying examination or adopt an existing examination that satisfies the recertification standards established by the bureau. In developing standards for recertification, the bureau shall consider information provided by the Council on Naturopathic Medical Education, naturopathic doctors, and other interested parties.

3635. (a) In addition to any other qualifications and requirements for licensure renewal, the bureau shall require the satisfactory completion of 60 hours of approved continuing education biennially. This requirement is waived for the initial license renewal. The continuing education shall meet the following requirements:

(1) At least 20 hours shall be in pharmacotherapeutics.

(2) No more than 15 hours may be in naturopathic medical journals or osteopathic or allopathic medical journals, or audio or videotaped presentations, slides, programmed instruction, or computer-assisted instruction or preceptorships.

(3) No more than 20 hours may be in any single topic.

(4) No more than 15 hours of the continuing education requirements for the specialty certificate in naturopathic childbirth attendance shall apply to the 60 hours of continuing education requirement.

(b) The continuing education requirements of this section may be met through continuing education courses approved by the California Association of Naturopathic Physicians, the American Association of Naturopathic Physicians, the Medical Board of California, the California State Board of Pharmacy, the State Board of Chiropractic Examiners, or other courses approved by the bureau.

3636. (a) Upon a written request, the bureau may grant inactive status to a naturopathic doctor who is in good standing and who meets the requirements of Section 462.

(b) A person whose license is in inactive status may not engage in any activity for which a license is required under this chapter.

(c) A person whose license is in inactive status shall be exempt from continuing education requirements while his or her license is in that status.

(d) To restore a license to active status, a person whose license is in inactive status must fulfill continuing education requirements for the two-year period prior to reactivation, and pay a reactivation fee established by the bureau.

3637. Only an individual may be licensed under this chapter.

Article 4. Application of Chapter

3640. (a) A naturopathic doctor may order and perform physical and laboratory examinations for diagnostic purposes, including, but not limited to, phlebotomy, clinical laboratory tests, speculum examinations, orificial examinations, and physiological function tests.

(b) A naturopathic doctor may order diagnostic imaging studies, including X-ray, ultrasound, mammogram, bone densitometry, and others, consistent with naturopathic training as determined by the bureau, but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results.

(c) A naturopathic doctor may dispense, administer, order, and prescribe or perform the following:

(1) Food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the federal Food, Drug, and Cosmetic Act.

(2) Hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise.

(3) Devices, including, but not limited to, therapeutic devices, barrier contraception, and durable medical equipment.

(4) Health education and health counseling.

(5) Repair and care incidental to superficial lacerations and abrasions, except suturing.

(6) Removal of foreign bodies located in the superficial tissues.

(d) A naturopathic doctor may utilize routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.

(e) The bureau may establish regulations regarding ocular or intravenous routes of administration that are consistent with the education and training of a naturopathic doctor.

(f) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests.

(g) The authority to use all routes for furnishing prescription drugs as described in Section 3640.5 shall be consistent with the oversight and supervision requirements of Section 2836.1.

3640.1. The bureau shall make recommendations to the Legislature not later than January 1, 2006, regarding the potential development of scope and supervision requirements of a naturopathic doctor for the performance of minor office procedures. The bureau shall consult with

physicians and surgeons and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

3640.5. Nothing in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when all of the following apply:

(a) The drugs are furnished or ordered by a naturopathic doctor in accordance with standardized procedures or protocols developed by the naturopathic doctor and his or her supervising physician and surgeon.

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

(c) The standardized procedure or protocol covering the furnishing of drugs shall specify which naturopathic doctors may furnish or order drugs, which drugs may be furnished or ordered under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the naturopathic doctor's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs by a naturopathic doctor occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

(1) Collaboration on the development of the standardized procedure.

(2) Approval of the standardized procedure.

(3) Availability by telephonic contact at the time of patient examination by the naturopathic doctor.

(e) For purposes of this section, a physician and surgeon shall not supervise more than four naturopathic doctors at one time.

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

dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.

(g) The bureau has certified in accordance with Section 2836.3 that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered under this section. The bureau shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term ''furnishing'' in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include both of the following:

(1) Ordering a drug in accordance with the standardized procedure.

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

(i) For purposes of this section, ''drug order'' or ''order'' means an order for medication which is dispensed to or for an ultimate user, issued by a naturopathic doctor as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations.

(j) Notwithstanding any other provision of law, the following apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician.

(2) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.

(3) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

3640.7. Notwithstanding the requirements of Section 3640.5 or any other provision of this chapter, a naturopathic doctor may independently prescribe epinephrine to treat anaphylaxis and natural and synthetic hormones.

3641. (a) A naturopathic doctor shall document his or her observations, diagnosis, and summary of treatment in the patient record. Patient records shall be maintained for a period of not less than seven years following the discharge of the patient. The records of an unemancipated minor shall be maintained until at least one year after the minor has reached 18 years of age or seven years following the discharge of the minor, whichever is longer.

(b) A naturopathic doctor shall have the same authority and responsibility as a licensed physician and surgeon with regard to public health laws, including laws governing reportable diseases and conditions, communicable disease control and prevention, recording vital statistics, and performing health and physical examinations consistent with his or her education and training.

3642. A naturopathic doctor may not perform any of the following functions:

(a) Prescribe, dispense, or administer a controlled substance or device identified in Sections 801 to 971, inclusive, of Title 21 of the United States Code, except as authorized by this chapter.

(b) Administer therapeutic ionizing radiation or radioactive substances.

(c) Practice or claim to practice any other system or method of treatment beyond that authorized by this chapter, for which licensure is required, unless otherwise licensed to do so.

(d) Administer general or spinal anesthesia.

(e) Perform an abortion.

(f) Perform any surgical procedure.

(g) Perform acupuncture or traditional Chinese and oriental medicine, including Chinese herbal medicine, unless licensed as an acupuncturist as defined in subdivision (c) of Section 4927.

3643. This chapter may not be construed to authorize a naturopathic doctor to practice medicine, as defined under Chapter 5 (commencing with Section 2000), except as specifically authorized in this chapter.

3643.5. (a) This chapter may not be construed to limit the practice of a person licensed, certified, or registered under any other provision of law relating to the healing arts when the person is engaged in his or her authorized and licensed practice.

(b) This chapter may not be construed to limit an activity that does not require licensure or is otherwise allowed by law, including the practice of naturopathy, when performed consistent with Sections 2053.5 and 2053.6.

3644. This chapter does not prevent or restrict the practice, services, or activities of any of the following:

(a) A person licensed, certified, or otherwise recognized in this state by any other law or regulation if that person is engaged in the profession or occupation for which he or she is licensed, certified, or otherwise recognized.

(b) A person employed by the federal government in the practice of naturopathic medicine while the person is engaged in the performance of duties prescribed by laws and regulations of the United States.

(c) A person rendering aid to a family member or in an emergency, if no fee or other consideration for the service is charged, received, expected, or contemplated.

(d) A person who makes recommendations regarding or is engaged in the sale of food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, dietary supplements, and nonprescription drugs or other products of nature, the sale of which is not otherwise prohibited under state or federal law.

(e) A person engaged in good faith in the practice of the religious tenets of any church or religious belief without using prescription drugs.

(f) A person acting in good faith for religious reasons as a matter of conscience or based on a personal belief, while obtaining or providing information regarding health care and the use of any product described in subdivision (d).

(g) A person who provides the following recommendations regarding the human body and its function:

(1) Nonprescription products.

(2) Natural elements such as air, heat, water, and light.

(3) Class I or class II nonprescription, approved medical devices, as defined in Section 360c of Title 21 of the United States Code.

(4) Vitamins, minerals, herbs, homeopathics, natural food products and their extracts, and nutritional supplements.

(h) A person who is licensed in another state, territory, or the District of Columbia to practice naturopathic medicine if the person is incidentally called into this state for consultation with a naturopathic doctor.

(i) A student enrolled in an approved naturopathic medical program whose services are performed pursuant to a course of instruction under the supervision of a naturopathic doctor.

3645. (a) This chapter permits, and does not restrict the use of, the following titles by persons who are educated and trained as any of the following:

(1) ''Naturopath.''

(2) ''Naturopathic practitioner.''

(3) ''Traditional naturopathic practitioner.''

(b) This chapter permits, and does not restrict, the education of persons as described in paragraphs (1) to (3), inclusive, of subdivision (a). Those persons are not required to be licensed under this chapter.

Article 5. Naturopathic Childbirth Attendance

3650. A naturopathic doctor may perform naturopathic childbirth attendance if he or she has completed additional training and has been granted a certificate of specialty practice by the bureau.

3651. In order to be certified for the specialty practice of naturopathic childbirth attendance, a naturopathic doctor shall obtain a passing grade on the American College of Nurse Midwives Written Examination, or a substantially equivalent examination approved by the bureau, and shall establish, to the bureau's satisfaction, compliance with one of the following requirements:

(a) Successful completion of a certificate of midwifery or naturopathic obstetrics specialty from an approved naturopathic medical

education program consisting of not less than 84 semester units or 126 quarter units that substantially complies with the following educational standards and requirements:

(1) The curriculum is presented in semester or quarter units under the following formula:

(A) One hour of instruction in the theory each week throughout a semester or quarter equals one unit.

(B) Three hours of clinical practice each week throughout a semester or quarter equals one unit.

(2) The program provides both academic and clinical preparation that is substantially equivalent to that provided in a program accredited by the American College of Nurse Midwives. The program includes, but is not limited to, preparation in all of the following areas:

(A) The art and science of midwifery, one-half of which shall be in theory and one-half of which shall be in clinical practice. Theory and clinical practice shall be concurrent in the areas of maternal and child health, including, but not limited to, labor and delivery, neonatal well care, and postpartum care.

(B) Communications skills that include the principles of oral, written, and group communications.

(C) Anatomy and physiology, genetics, obstetrics and gynecology, embryology and fetal development, neonatology, applied microbiology, chemistry, child growth and development, pharmacology, nutrition, laboratory diagnostic tests and procedures, and physical assessment.

(D) Concepts in psychosocial, emotional, and cultural aspects of maternal and child care, human sexuality, counseling and teaching, maternal and infant and family bonding process, breast feeding, family planning, principles of preventive health, and community health.

(E) Aspects of the normal pregnancy, labor and delivery, postpartum period, newborn care, family planning, or routine gynecological care in alternative birth centers, homes, and hospitals.

(3) The program integrates the following subjects throughout its entire curriculum:

(A) Midwifery process.

(B) Basic intervention skills in preventive, remedial, and supportive midwifery.

(C) The knowledge and skills required to develop collegial relationships with health care providers from other disciplines.

(D) Related behavioral and social sciences with emphasis on societal and cultural patterns, human development, and behavior related to maternal and child health, illness, and wellness.

(4) Instruction in personal hygiene, client abuse, cultural diversity, and the legal, social, and ethical aspects of midwifery.

(5) Instruction in the midwifery management process which shall include all of the following:

(A) Obtaining or updating a defined and relevant database for assessment of the health status of the client.

(B) Identifying problems based upon correct interpretation of the database.

(C) Preparing a defined needs or problem list, or both, with corroboration from the client.

(D) Consulting, collaborating with, and referring to, appropriate members of the health care team.

(E) Providing information to enable clients to make appropriate decisions and to assume appropriate responsibility for their own health.

(F) Assuming direct responsibility for the development of comprehensive, supportive care for the client and with the client.

(G) Assuming direct responsibility for implementing the plan of care.

(H) Initiating appropriate measures for obstetrical and neonatal emergencies.

(I) Evaluating, with corroboration from the client, the achievement of health care goals and modifying the plan of care appropriately, or

(b) Successful completion of an educational program that the bureau has determined satisfies the criteria of subdivision (a) and current licensure as a midwife by a state with licensing standards that have been found by the bureau to be substantially equivalent to those adopted by the bureau pursuant to this article.

3651.5. A naturopathic doctor certified for the specialty practice of naturopathic childbirth attendance shall do both of the following:

(a) Maintain current certification in neonatal resuscitation and cardiopulmonary resuscitation.

(b) File with the bureau a written plan for the following:

(1) Consultation with other health care providers.

(2) Supervision by a licensed physician and surgeon who has current practice or training in obstetrics to assist a woman in childbirth so long as progress meets criteria accepted as normal. The plan shall provide that all complications shall be referred to a physician and surgeon immediately.

(3) Emergency transfer and transport of an infant or a maternity patient, or both, to an appropriate health care facility, and access to neonatal intensive care units and obstetrical units or other patient care areas.

3652. (a) A certificate of specialty practice in naturopathic childbirth attendance shall expire concurrently with the licensee's naturopathic doctor's license.

(b) The certificate may be renewed upon submission of the renewal fee set by the bureau and evidence, to the bureau's satisfaction, of the

completion of 30 hours of continuing education credits in naturopathic childbirth, midwifery, or obstetrics. Fifteen hours may be applied to the 60 hours of continuing education required for naturopathic doctors.

(c) Licensing or disciplinary action by the bureau or a judicial authority shall be deemed to have an equal effect upon the specialty certificate to practice naturopathic childbirth issued to a licensee, unless otherwise specified in the licensing or disciplinary action. When the subject of a licensing or disciplinary action relates specifically to the practice of naturopathic childbirth by a licensee holding a specialty certificate, the action may, instead of affecting the entire scope of the licensee's practice, suspend, revoke, condition, or restrict only the licensee's authority under the specialty certificate.

3653. (a) Naturopathic childbirth attendance does not include the use or performance of any of the following:

(1) Forceps delivery.

(2) General or spinal anesthesia.

(3) Cesarean section delivery.

(4) Episiotomies, except to the extent that they meet the same supervision requirements set forth in Section 2746.52.

(b) Naturopathic childbirth attendance does not mean the management of complications in pregnancy, labor, delivery, or the neonatal period. All complications shall be referred to an obstetrician or other licensed physician and surgeon as appropriate.

3654. In addition to Section 3640, a naturopathic doctor who holds a specialty certificate in naturopathic childbirth attendance may administer, order, or perform any of the following:

(a) Postpartum antihemorrhagic drugs.

(b) Prophylactic opthalmic antibiotics.

(c) Vitamin K.

(d) RhoGAM.

(e) Local anesthetic medications.

(f) Intravenous fluids limited to lactated ringers, 5 percent dextrose with lactated ringers, and heparin and 0.9 percent sodium chloride for use in intravenous locks.

(g) Epinephrine for use in maternal anaphylaxis pending emergency transport.

(h) Measles, mumps, and rubella (MMR) vaccine to nonimmune, nonpregnant women.

(i) HBIG and GBV for neonates born to hepatitis B mothers, per current Centers for Disease Control guidelines.

(j) Antibiotics for intrapartum prophylaxis of Group B Betahemolytic Streptococcus (GBBS), per current Centers For Disease Control guidelines.

(k) Equipment incidental to the practice of naturopathic childbirth, specifically, dopplers, syringes, needles, phlebotomy equipment, suture, urinary catheters, intravenous equipment, amnihooks, airway suction devices, neonatal and adult resuscitation equipment, glucometer, and centrifuge.

(*l*) Equipment incidental to maternal care, specifically, compression stockings, maternity belts, breast pumps, diaphragms, and cervical caps.

3655. (a) A licensee holding a speciality certificate in naturopathic childbirth attendance shall disclose to each client, in writing, the following:

(1) The qualifications and credentials of the naturopathic doctor.

(2) A copy of the written plan for consultation, emergency transfer, and transport.

(3) A description of the procedures, benefits, and risks of birth in the home or outside of a hospital setting.

(4) The status of liability coverage of the licensee for the practice of naturopathic childbirth attendance.

(b) The form must be signed by the client, filed in the client's chart, and a copy given to the client.

Article 6. Offenses and Enforcement

3660. Except as provided in subdivision (h) of Section 3644, a person shall have a valid, unrevoked, or unsuspended license issued under this chapter to do any of the following:

(a) To claim to be a naturopathic doctor, licensed naturopathic doctor, doctor of naturopathic medicine, doctor of naturopathy, or naturopathic medical doctor.

(b) To use the professional abbreviation ''N.D.'' or other titles, words, letters, or symbols with the intent to represent that he or she practices, is authorized to practice, or is able to practice naturopathic medicine as a naturopathic doctor.

3661. A naturopathic doctor who uses the term or designation ''Dr.'' shall further identify himself or herself as ''Naturopathic Doctor,'' ''Licensed Naturopathic Doctor,'' ''Doctor of Naturopathic Medicine,'' or ''Doctor of Naturopathy'' and shall not use any term or designation that would tend to indicate the practice of medicine, other than naturopathic medicine, unless otherwise licensed as a physician and surgeon, osteopathic doctor, or doctor of chiropractic.

3662. It shall constitute unprofessional conduct for a naturopathic doctor to violate, attempt to violate, assist in the violation of, or conspire to violate, any provision or term of this chapter or any regulation adopted under it.

3663. The bureau may discipline a naturopathic doctor for unprofessional conduct. After a hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), the bureau may deny, suspend, revoke, or place on probation the license of, or reprimand, censure, or otherwise discipline a naturopathic doctor in accordance with Division 1.5 (commencing with Section 475).

3664. A person who violates Section 3660 or 3661 is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000), or by imprisonment of not more than one year in a county jail, or by both that fine and imprisonment.

Article 7. Naturopathic Corporations

3670. A naturopathic corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, if the corporation and its shareholders, officers, directors, and employees rendering professional services who are naturopathic doctors are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this chapter, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a naturopathic corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the bureau.

3671. A naturopathic corporation shall not engage in any conduct that constitutes unprofessional conduct. In the conduct of its practice, the naturopathic corporation shall comply with statutes and regulations to the same extent as an individual holding a license under this chapter.

3672. The income of a naturopathic corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of the shareholder or his or her shares in the naturopathic corporation.

3673. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a naturopathic corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined by Section 13401 of the Corporations Code.

3674. The name of a naturopathic corporation and any name or names under which it may render professional services, shall contain the words ‘‘naturopathic’’ or ‘‘naturopathic doctor’’ and, as appropriate, wording or abbreviations denoting its status as a corporation.

3675. The bureau may adopt and enforce regulations to carry out the purposes and objectives of this article, including, but not limited to, regulations requiring the following:

(a) That the bylaws of a naturopathic corporation include a provision whereby the capital stock of the corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within any time as the regulations may provide.

(b) That a naturopathic corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

Article 8. Fiscal Administration

3680. The bureau shall establish the amount of the fee assessed to conduct activities of the bureau, including the amount of fees for applicant licensure, licensure examination, licensure renewal, late renewal, and childbirth certification.

3681. (a) All fees collected by the bureau shall be paid into the State Treasury and shall be credited to the Naturopathic Doctor's Fund which is hereby created in the State Treasury. The money in the fund shall be available to the bureau for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

(b) Notwithstanding subdivision (a), all money other than revenue described in Section 207 received and credited to the Naturopathic Doctor's Fund in the 2003–04 fiscal year is hereby appropriated to the bureau for the purpose of implementing this chapter.

Article 9. Miscellaneous Provisions

3685. (a) The provisions of Article 8 (commencing with Section 3680) shall become operative on January 1, 2004, but the remaining provisions of this chapter shall become operative on July 1, 2004. It is the intent of the Legislature that the initial implementation of this chapter be administered by fees collected in advance from applicants. Therefore, the bureau shall have the power and authority to establish fees and receive applications for licensure or intents to file application statements on and after January 1, 2004. The department shall certify that sufficient funds are available prior to implementing this chapter. Funds from the General Fund may not be used for the purpose of implementing this chapter.

(b) This chapter shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute that is enacted

before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this chapter renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).

(c) The bureau shall prepare the report required by Section 473.2 no later than September 1, 2007.

SEC. 6. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.

(9) Licensed acupuncturists.

(10) Naturopathic doctors.

(b) Podiatric medical corporation.

(1) Licensed physicians and surgeons.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed chiropractors.

(6) Licensed acupuncturists.

(7) Naturopathic doctors.

(c) Psychological corporation.

(1) Licensed physicians and surgeons.

(2) Licensed doctors of podiatric medicine.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.

(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.

SEC. 7. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so

designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(*l*) Acupuncture corporation.

(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physician and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

SEC. 8. Section 7 of this bill incorporates amendments to Section 13401.5 of the Corporations Code proposed by both this bill and AB 123. 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 13401.5 of the Corporations Code, and (3) this bill is enacted after AB 123, in which case Section 6 of this bill shall not become operative.

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 486

An act to amend Sections 17024.5 and 23051.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 22, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms ''Internal Revenue Code,'' ''Internal Revenue Code of 1954,'' or ''Internal Revenue Code of 1986,'' for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990	January 1, 1990
(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992	January 1, 1992

(J) For taxable years beginning on or after January 1, 1993, and on or before December 31, 1996	January 1, 1993
(K) For taxable years beginning on or after January 1, 1997, and on or before December 31, 1997	January 1, 1997
(L) For taxable years beginning on or after January 1, 1998, and on or before December 31, 2001	January 1, 1998
(M) For taxable years beginning on or after January 1, 2002	January 1, 2001

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any provision of the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by ''the secretary'' shall be applicable as regulations under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by ''the secretary'' shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax

imposed under this part or Part 11 (commencing with Section 23001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001), as applicable, and that taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 11 (commencing with Section 23001), that taxpayer may not make a separate California election for purposes of this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001) unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or the regulation issued by ''the secretary'' authorizing an election for federal income tax purposes apply for purposes of this part, Part 10.2 (commencing with Section 18401) or Part 11 (commencing with Section 23001).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to ''adjusted gross income'' shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) References to ''adjusted gross income'' for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) Any reference to ''subtitle'' or ''chapter'' shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of ''Franchise Tax Board'' for ''secretary'' when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 2. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms ''Internal Revenue Code,'' ''Internal Revenue Code of 1954,'' or ''Internal Revenue Code of 1986,'' for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5.

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For taxable years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by ''the secretary'' shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by ''the secretary'' shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner that may be required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax imposed under this part or Part 10 (commencing with Section 17001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), as applicable, and that

taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 10 (commencing with Section 17001), that taxpayer may not make a separate California election for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or regulations issued by ''the secretary'' authorizing an election for federal income tax purposes apply for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term ''taxable income'' shall mean ''net income.''

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term ''taxable income'' shall mean ''unrelated business taxable income,'' as defined by Section 23732.

(3) Any reference to ''subtitle,'' ''Chapter 1,'' or ''chapter'' shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of ''Franchise Tax Board'' for ''secretary'' when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a ''corporation'' shall, when applicable for purposes of this part, include a ''bank,'' as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

CHAPTER 487

An act to amend Section 17538.45 of, to add Article 1.8 (commencing with Section 17529) to Chapter 1 of Part 3 of Division 7 of, and to repeal Section 17538.4 of, the Business and Professions Code, relating to privacy.

[Approved by Governor September 23, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Article 1.8 (commencing with Section 17529) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 1.8. Restrictions On Unsolicited Commercial E-mail Advertisers

17529. The Legislature hereby finds and declares all of the following:

(a) Roughly 40 percent of all e-mail traffic in the United States is comprised of unsolicited commercial e-mail advertisements (hereafter spam) and industry experts predict that by the end of 2003 half of all e-mail traffic will be comprised of spam.

(b) The increase in spam is not only an annoyance but is also an increasing drain on corporate budgets and possibly a threat to the continued usefulness of the most successful tool of the computer age.

(c) Complaints from irate business and home-computer users regarding spam have skyrocketed, and polls have reported that 74 percent of respondents favor making mass spamming illegal and only 12

percent are opposed, and that 80 percent of respondents consider spam very annoying.

(d) According to Ferris Research Inc., a San Francisco consulting group, spam will cost United States organizations more than ten billion dollars ($10,000,000,000) this year, including lost productivity and the additional equipment, software, and manpower needed to combat the problem. California is 12 percent of the United States population with an emphasis on technology business, and it is therefore estimated that spam costs California organizations well over 1.2 billion dollars ($1,200,000,000).

(e) Like junk faxes, spam imposes a cost on users, using up valuable storage space in e-mail inboxes, as well as costly computer band width, and on networks and the computer servers that power them, and discourages people from using e-mail.

(f) Spam filters have not proven effective.

(g) Like traditional paper ''junk'' mail, spam can be annoying and waste time, but it also causes many additional problems because it is easy and inexpensive to create, but difficult and costly to eliminate.

(h) The ''cost shifting'' from deceptive spammers to Internet business and e-mail users has been likened to sending junk mail with postage due or making telemarketing calls to someone's pay-per-minute cellular phone.

(i) Many spammers have become so adept at masking their tracks that they are rarely found, and are so technologically sophisticated that they can adjust their systems to counter special filters and other barriers against spam and can even electronically commandeer unprotected computers, turning them into spam-launching weapons of mass production.

(j) There is a need to regulate the advertisers who use spam, as well as the actual spammers, because the actual spammers can be difficult to track down due to some return addresses that show up on the display as ''unknown'' and many others being obvious fakes and they are often located offshore.

(k) The true beneficiaries of spam are the advertisers who benefit from the marketing derived from the advertisements.

(*l*) In addition, spam is responsible for virus proliferation that can cause tremendous damage both to individual computers and to business systems.

(m) Because of the above problems, it is necessary that spam be prohibited and that commercial advertising e-mails be regulated as set forth in this article.

17529.1. For the purpose of this article, the following definitions apply:

(a) ''Advertiser'' means a person or entity that advertises through the use of commercial e-mail advertisements.

(b) ''California electronic mail address'' or ''California e-mail address'' means any of the following:

(1) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state.

(2) An e-mail address ordinarily accessed from a computer located in this state.

(3) An e-mail address furnished to a resident of this state.

(c) ''Commercial e-mail advertisement'' means any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

(d) ''Direct consent'' means that the recipient has expressly consented to receive e-mail advertisements from the advertiser, either in response to a clear and conspicuous request for the consent or at the recipient's own initiative.

(e) ''Domain name'' means any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic address on the Internet.

(f) ''Electronic mail'' or ''e-mail'' means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt or is viewed upon transmission or stored for later retrieval. ''Electronic mail'' or ''e-mail'' includes electronic messages that are transmitted through a local, regional, or global computer network.

(g) ''Electronic mail address'' or ''e-mail address'' means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An ''electronic mail address'' or ''e-mail address'' consists of a user name or mailbox and a reference to an Internet domain.

(h) ''Electronic mail service provider'' means any person, including an Internet service provider, that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail.

(i) ''Initiate'' means to transmit or cause to be transmitted a commercial e-mail advertisement or assist in the transmission of a commercial e-mail advertisement by providing electronic mail addresses where the advertisement may be sent, but does not include the routine transmission of the advertisement through the network or system

of a telecommunications utility or an electronic mail service provider through its network or system.

(j) ''Incident'' means a single transmission or delivery to a single recipient or to multiple recipients of unsolicited commercial e-mail advertisement containing substantially similar content.

(k) ''Internet'' has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

(*l*) ''Preexisting or current business relationship,'' as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser.

Commercial e-mail advertisements sent pursuant to the exemption provided for a preexisting or current business relationship shall provide the recipient of the commercial e-mail advertisement with the ability to ''opt-out'' from receiving further commercial e-mail advertisements by calling a toll-free telephone number or by sending an ''unsubscribe'' e-mail to the advertiser offering the products or services in the commercial e-mail advertisement. This opt-out provision does not apply to recipients who are receiving free e-mail service with regard to commercial e-mail advertisements sent by the provider of the e-mail service.

(m) ''Recipient'' means the addressee of an unsolicited commercial e-mail advertisement. If an addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses to which an unsolicited commercial e-mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail advertisement is sent.

(n) ''Routine transmission'' means the transmission, routing, relaying, handling, or storing of an electronic mail message through an automatic technical process. ''Routine transmission'' shall not include the sending, or the knowing participation in the sending, of unsolicited commercial e-mail advertisements.

(o) ''Unsolicited commercial e-mail advertisement'' means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

(1) The recipient has not provided direct consent to receive advertisements from the advertiser.

(2) The recipient does not have a preexisting or current business relationship, as defined in subdivision (*l*), with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

17529.2. Notwithstanding any other provision of law, a person or entity may not do any of the following:

(a) Initiate or advertise in an unsolicited commercial e-mail advertisement from California or advertise in an unsolicited commercial e-mail advertisement sent from California.

(b) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

17529.3. Nothing in this article shall be construed to limit or restrict the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, receive, route, relay, handle, or store certain types of electronic mail messages.

17529.4. (a) It is unlawful for any person or entity to collect electronic mail addresses posted on the Internet if the purpose of the collection is for the electronic mail addresses to be used to do either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to California electronic mail address.

(b) It is unlawful for any person or entity to use an electronic mail address obtained by using automated means based on a combination of names, letters, or numbers to do either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts from which to do, or to enable another person to do, either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

17529.5. It is unlawful for any person or entity to advertise using a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(a) The commercial e-mail advertisement contains or is accompanied by a third party's domain name without the permission of the third party.

(b) The commercial e-mail advertisement contains or is accompanied by falsified, misrepresented, obscured, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(c) The commercial e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

17529.8. (a) (1) In addition to any other remedies provided by this article or by any other provisions of law, a recipient of an unsolicited commercial e-mail advertisement transmitted in violation of this article, an electronic mail service provider, or the Attorney General may bring an action against an entity that violates any provision of this article to recover either or both of the following:

(A) Actual damages.

(B) Liquidated damages of one thousand dollars ($1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of Section 17529.2, up to one million dollars ($1,000,000) per incident.

(2) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(3) However, there shall not be a cause of action against an electronic mail service provider that is only involved in the routine transmission of the unsolicited commercial e-mail advertisement over its computer network.

(b) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this article, the court shall reduce the liquidated damages recoverable under subdivision (a) to a maximum of one hundred dollars ($100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars ($100,000) per incident.

17529.9. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

SEC. 2. Section 17538.4 of the Business and Professions Code is repealed.

SEC. 3. Section 17538.45 of the Business and Professions Code is amended to read:

17538.45. (a) For purposes of this section, the following words have the following meanings:

(1) ''Electronic mail advertisement'' means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) ''Unsolicited electronic mail advertisement'' means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) ''Electronic mail service provider'' means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) ''Initiation'' of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) ''Registered user'' means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars ($50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars ($25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support such a finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) (A) An electronic mail service provider who has brought an action against a party for a violation subject to Section 17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action

against that party under Section 17529.8 for the same unsolicited commercial electronic mail advertisement.

SEC. 4. A cause of action that is in existence before the effective date of this act shall not be affected by this act, but shall instead be governed by the law that was in effect at the time the cause of action arose.

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 488

An act to add Division 38 (commencing with Section 72400) to the Public Resources Code, relating to vessels.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Division 38 (commencing with Section 72400) is added to the Public Resources Code, to read:

DIVISION 38. LARGE PASSENGER VESSELS

CHAPTER 1. FINDINGS AND DECLARATIONS

72400. The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of sewage sludge and oily bilgewater, into the marine waters of the state and marine sanctuaries, should be prohibited.

CHAPTER 2. DEFINITIONS

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) ''Board'' means the State Water Resources Control Board.

(c) ''Large passenger vessel'' or ''vessel'' means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) ''Marine waters of the state'' means ''coastal waters'' as defined in Section 13181 of the Water Code.

(e) ''Marine sanctuary'' means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(f) ''Oil'' has the meaning set forth in Section 8750.

(g) ''Oily bilgewater'' includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) ''Operator'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(i) ''Owner'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) ''Release'' means discharging or disposing of wastes into the environment.

(k) ''Sewage sludge'' has the meaning set forth in Section 503.9 of Title 40 of the Code of Federal Regulations.

CHAPTER 3. PROHIBITED RELEASES

72420. (a) If the appropriate federal agencies approve an application made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage sludge from the vessel into the marine waters of the state or a marine sanctuary.

(b) An owner or operator of a large passenger vessel may not release, or permit anyone to release, any oily bilgewater from the vessel into the marine waters of the state or a marine sanctuary.

72421. If a large passenger vessel releases sewage sludge or oily bilgewater into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

(a) Date of the release.

(b) Time of the release.
(c) Location of the release.
(d) Volume of the release.
(e) Source of the release.
(f) Remedial actions taken to prevent future releases.

CHAPTER 4. PENALTIES

72430. (a) A person who violates Section 72420 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

CHAPTER 5. MISCELLANEOUS

72440. (a) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state or marine sanctuaries. If the board determines that application is necessary, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state and marine sanctuaries.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

72441. (a) This division does not apply to either of the following:

(1) A large passenger vessel that operates in the marine waters of the state solely in innocent passage.

(2) Discharges made for the purpose of securing the safety of the large passenger vessel or saving life at sea, if reasonable precautions are taken for the purpose of preventing or minimizing the discharge.

(b) For the purposes of this section, a vessel is engaged in innocent passage if its operation in state waters would constitute innocent passage under either the Convention on the Territorial Sea and Contiguous Zone, dated April 29, 1958, or the United Nations Convention on the Law of the Sea, dated December 10, 1982.

72442. The board may adopt regulations to carry out this division.

CHAPTER 489

An act to amend Section 91.5 of, and to add Section 91.6 to, the Streets and Highways Code, relating to highways.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 91.5 of the Streets and Highways Code is amended to read:

91.5. (a) The department may enter into an agreement to accept funds, materials, equipment, or services from any person for maintenance or roadside enhancement, including the cleanup and abatement of litter, of a section of a state highway. The department and the sponsoring person may specify in the agreement the level of maintenance that will be performed.

(b) The director may authorize a courtesy sign. These courtesy signs shall be consistent with existing code provisions and department rules and regulations concerning signs.

SEC. 2. Section 91.6 is added to the Streets and Highways Code, to read:

91.6. The department shall, within its maintenance programs relating to litter cleanup and abatement, assign a high priority to litter deposited along state highway segments adjoining storm drains, streams, rivers, waterways, beaches, the ocean, and other environmentally sensitive areas. The department may use litter traps in drains and any other effective technology in carrying out these responsibilities.

CHAPTER 490

An act to amend Section 12021 of the Penal Code, relating to firearms.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare

and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The

juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court

only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 of 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family

Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions

for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the

prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before

the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied

by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2 of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars

($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of

Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a

condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall

not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender

or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the

use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the

hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a

ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any

other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a

conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the

prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the

transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2 of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or

receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.6. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section

12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other

person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 of 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 1.7. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6,

when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief

is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not

exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The

order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 1290. 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 12021 of the Penal Code, (3) SB 226 and SB 238 are not enacted or as

enacted do not amend that section, and (4) this bill is enacted after AB 1290, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 226. 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 12021 of the Penal Code, (3) AB 1290 and SB 238 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 226, in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 238. 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 12021 of the Penal Code, (3) AB 1290 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 238, in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290 and SB 226. 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 12021 of the Penal Code, (3) SB 238 is not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290 and SB 226, in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(e) Section 1.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, SB 226 and SB 238. 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 12021 of the Penal Code, (3) AB 1290 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 226 and SB 238, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(f) Section 1.6 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290 and SB 238. 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 12021 of the Penal Code, (3) SB 226 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1290 and SB 238, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(g) Section 1.7 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290, SB 226, and SB 238. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) all four bills amend Section 12021 of the Penal Code, and (3) this bill is enacted after AB 1290, SB 226, and SB 238, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

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 491

An act to amend Sections 71200, 71201, 71201.5, 71202, 71203, 71204, 71205, 71206, 71207, 71211, 71212, 71213, 71215, 71216, and 71271 of, to amend the headings of Chapter 4 (commencing with Section 71215) of, and Chapter 5 (commencing with Section 71216) of, Division 36 of, to add Sections 71201.7, 71204.2, 71204.3, 71204.5, 71204.7, 71204.9, 71210.5, and 71217 to, and to repeal and add Section 71210 of, the Public Resources Code, and to amend Sections 44000, 44005, 44007, and 44008 of the Revenue and Taxation Code, relating to vessels.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) ''Ballast tank'' means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) ''Ballast water'' means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) ''Board'' means the State Water Resources Control Board.

(d) ''Coastal waters'' means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

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

(f) ''EEZ'' means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(g) ''Exchange'' means to replace the water in a ballast tank using either of the following methods:

(1) ''Flow through exchange,'' which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) ''Empty/refill exchange,'' which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(h) ''Mid-ocean waters'' means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(i) ''Nonindigenous species'' means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(j) ''Pacific Coast Region'' means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(k) ''Person'' means any individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. ''Person'' also means any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of the state, any interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(*l*) ''Sediments'' means any matter settled out of ballast water within a vessel.

(m) ''Waters of the state'' means any surface waters, including saline waters, that are within the boundaries of the state.

(n) ''Vessel'' means a vessel of 300 gross registered tons or more.

(o) ''Voyage'' means any transit by a vessel destined for any California port or place from a port or place outside of the coastal waters of the state.

SEC. 2. Section 71201 of the Public Resources Code is amended to read:

71201. (a) This division applies to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel.

(c) This division may be known, and may be cited, as the ''Marine Invasive Species Act.''

(d) The Legislature finds and declares that the purpose of this division is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

SEC. 3. Section 71201.5 of the Public Resources Code is amended to read:

71201.5. This division does not authorize the discharge of oil, noxious liquids, or other pollutants, in a manner prohibited by state, federal, or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

SEC. 4. Section 71201.7 is added to the Public Resources Code, to read:

71201.7. The commission shall adopt regulations necessary to implement this division, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 71202 of the Public Resources Code is amended to read:

71202. This division does not apply to any of the following vessels:

(a) A vessel of the armed forces, as defined in paragraph (14) of subsection (a) of Section 1322 of Title 33 of the United States Code that is subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' pursuant to subsection (n) of Section 1322 of Title 33 of the United States Code.

(b) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state.

SEC. 6. Section 71203 of the Public Resources Code is amended to read:

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

SEC. 7. Section 71204 of the Public Resources Code is amended to read:

71204. Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.

(c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.

(2) Areas near a sewage outfall.

(3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.

(4) Areas where tidal flushing is known to be poor or in turbid waters.

(5) In darkness when bottom-dwelling organisms may rise up in the water column.

(6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.

(d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements at port or in drydock, to remove sediments, and dispose of the sediments in accordance with local, state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f) Remove fouling organisms from hull, piping, and tanks on a regular basis, and dispose of any removed substances in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship's officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel's ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

SEC. 8. Section 71204.2 is added to the Public Resources Code, to read:

71204.2. Prior to and until the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the EEZ shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the waters of the state.

(b) Retain all ballast water on board the vessel.

(c) (1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, ''same location'' means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 9. Section 71204.3 is added to the Public Resources Code, to read:

71204.3. Commencing on the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the Pacific Coast Region shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the coastal waters of the state.

(b) Retain all ballast water on board the vessel.

(c) (1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, ''same location'' means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 10. Section 71204.5 is added to the Public Resources Code, to read:

71204.5. (a) On or before January 1, 2005, the commission shall adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state. The regulations shall include, as appropriate, restrictions or prohibitions on discharge of ballast water containing nonindigenous species into areas in and outside estuaries and into ocean areas shown to have a capacity to retain organisms.

(b) Subject to Section 71203, and commencing no later than July 1, 2005, the master, operator, or person in charge of a vessel arriving at a California port or place from a port or place within the Pacific Coast Region shall comply with these regulations.

SEC. 11. Section 71204.7 is added to the Public Resources Code, to read:

71204.7. (a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application, the commission may subsequently deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the standard is adopted.

(1) A system approval on a particular vessel may be extended for an additional period not to exceed five years, at the discretion of the commission. That extension may be renewed for additional periods not to exceed five years each, if the owner or operator demonstrates that the system is at least as effective as existing systems in its ability to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in

performance, human safety, or environmental soundness relative to anticipated performance.

(d) The commission may not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

SEC. 12. Section 71204.9 is added to the Public Resources Code, to read:

71204.9. (a) (1) On or before January 31, 2006, the commission, in consultation with the board and in consideration of the advisory panel recommendations described in subdivision (b), shall submit to the Legislature and make available to the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. The performance standards shall be based on the best available technology economically achievable and shall be designed to protect the beneficial uses of affected, and potentially affected, waters. If the commission, based on the best available information, and in consultation with the board and in consideration of the advisory panel recommendations, determines that it is technologically and economically achievable to prohibit the discharge of nonindigenous species, the commission shall include this recommendation in the report to the Legislature.

(2) As appropriate, the commission may recommend different performance standards for vessels arriving from mid-ocean waters, for vessels that travel exclusively within the Pacific Coast Region, for new or existing vessels, or for different vessel types. Each set of performance standards shall be based on the best available technology economically achievable for the described category of vessel.

(b) (1) The commission shall convene and consult with an advisory panel in developing the report required by subdivision (a). The advisory panel shall be comprised of persons concerned with performance standards for the discharge of treated ballast water. The advisory panel shall include, but not be limited to, representatives from one or more California regional water quality control boards, the Department of Fish and Game, the United States Coast Guard, the United States Environmental Protection Agency, and persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and panel members.

(2) The advisory panel shall make recommendations regarding the content, issuance, and implementation of the performance standards to the commission.

(3) (A) The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's Web site. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include a brief general description of the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The advisory panel shall submit its recommendations to the commission on or before July 1, 2005.

SEC. 13. Section 71205 of the Public Resources Code is amended to read:

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port or place, shall provide the information described in subdivision (c) in electronic or written form to the commission upon the vessel's departure from each port or place of call in California.

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port or place of call in California.

(c) (1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m3).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, which shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

SEC. 14. Section 71206 of the Public Resources Code is amended to read:

71206. (a) The commission, in coordination with the United States Coast Guard, shall take samples of ballast water and sediment from at least 25 percent of the arriving vessels subject to this division, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division. The commission shall provide to the board copies of all sampling results.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the commission, upon request of that commission, the records required by Section 71205.

(c) The commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

SEC. 15. Section 71207 of the Public Resources Code is amended to read:

71207. (a) This division describes the state program to regulate the discharge or release of ballast water and other vectors of nonindigenous species from vessels regulated pursuant to this division. Prior to January 1, 2010, a state agency, board, commission, or department shall not impose a requirement, pertaining to the discharge or release of ballast water and other vectors of nonindigenous species from a vessel regulated pursuant to this division, that is different from the requirements set forth in this division, unless that action is mandated by federal law.

(b) Nothing in this division restricts state agencies from enforcing this division.

(c) Any person violating this division is subject to civil and criminal liability in accordance with Chapter 5 (commencing with Section 71216).

(d) The commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat, or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers.

SEC. 16. Section 71210 of the Public Resources Code is repealed.

SEC. 17. Section 71210 is added to the Public Resources Code, to read:

71210. (a) The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives, shall sponsor a pilot program for the purpose of evaluating alternatives for treating and otherwise managing ballast water. The goal of this effort shall be the reduction or elimination of the

discharge of nonindigenous species into the coastal waters of the state or into waters that may impact coastal waters of the state. Whenever possible, the pilot programs shall include funding from federal grants and appropriations, vendor funding, and state bond funds, including, but not limited to, bond funds from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Priority shall be given to projects to test and evaluate treatment technologies that can be used to prevent the introduction and spread of nonindigenous aquatic species into coastal waters of the state by ship-mediated vectors.

(b) The commission shall provide biennial summaries to the Legislature and the public, beginning on or before January 31, 2005, of the results of the pilot programs conducted pursuant to this section. These summary reports shall include, but not be limited to, a description of the projects, the relative effectiveness of the technologies examined in minimizing the discharge of nonindigenous species, and the costs of implementing the technologies.

SEC. 18. Section 71210.5 is added to the Public Resources Code, to read:

71210.5. The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons including, but not limited to, shipping and port representatives, shall prepare an analysis of the vectors, other than ballast water, and relative risks of those vectors, for release of nonindigenous species from vessels. This analysis shall include, but not be limited to, the release of nonindigenous species from vessel hulls, sea chests, sea suction grids, other hull apertures, in-water propellers, chains, anchors, piping and tanks. The commission shall prepare a report summarizing the results of this analysis and recommending action to reduce the discharge of nonindigenous species from vessel vectors other than ballast water. The commission shall submit the report to the Legislature and make it available to the public on or before March 1, 2006.

SEC. 19. Section 71211 of the Public Resources Code is amended to read:

71211. (a) (1) The Department of Fish and Game, in consultation with the commission and the United States Coast Guard, shall collect data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species populations in the coastal and estuarine waters of the state that includes open coastal waters and bays and estuaries. In particular, data shall be collected that does both of the following:

(A) Supplements the existing baseline of nonindigenous species previously developed pursuant to this section, by adding data from

investigations of intertidal and nearshore subtidal habitats along the open coast.

(B) Monitors the coastal and estuarine waters of the state, including, but not limited to, habitats along the open coast, for new introductions of nonindigenous species or spread of existing nonindigenous species populations.

(2) Whenever possible, the study shall utilize appropriate, existing data, including data from previous studies made pursuant to this section. The Department of Fish and Game shall make the inventory and accompanying analysis available to the public through the Internet on or before January 1, 2007, and shall provide to the public an update of that inventory no later than July 1, 2008.

(b) (1) The Department of Fish and Game, in consultation with the commission and the United States Coast Guard, shall assess the effectiveness of the ballast water controls implemented pursuant to this division by comparing the status and establishment of nonindigenous species populations, as determined from the data collected pursuant to subdivision (a), with the baseline data collected pursuant to this division and submitted in a report to the Legislature in 2003.

(2) Whenever possible, this research shall utilize appropriate, existing data.

(3) The Department of Fish and Game shall submit a report presenting its assessment to the Legislature and the public on or before January 1, 2009.

(c) Information generated by the research conducted pursuant to this section shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

(1) The determination of alternative discharge zones.

(2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.

(3) The long-term effectiveness of discharge control measures.

(4) The determination of potential risk zones where uptake or discharge of ballast water shall be prohibited.

(5) The rate and risk of establishment of nonindigenous species in the coastal waters of the state, and resulting impacts.

SEC. 20. Section 71212 of the Public Resources Code is amended to read:

71212. On or before January 31, 2005, and updated biennially, the commission, in consultation with the board, the Department of Fish and Game, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the commission, including the

volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels.

SEC. 21. Section 71213 of the Public Resources Code is amended to read:

71213. The commission, the board, and the Department of Fish and Game, in consultation with interested stakeholders, shall identify and conduct any other research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water to reduce or eliminate the discharge or establishment of nonindigenous species.

SEC. 22. The heading of Chapter 4 (commencing with Section 71215) of Division 36 of the Public Resources Code is amended to read:

CHAPTER 4. MARINE INVASIVE SPECIES CONTROL FUND

SEC. 23. Section 71215 of the Public Resources Code is amended to read:

71215. (a) (1) The Marine Invasive Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used solely to carry out this division.

(2) All money accruing to the Exotic Species Control Fund shall be transferred to the Marine Invasive Species Control Fund.

(b) (1) The commission shall administer the fund in accordance with this chapter.

(2) The commission shall establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out this division. The fee may not exceed one thousand dollars ($1,000) for each voyage, as described in subdivision (c). This amount may be adjusted for inflation every two years.

(3) In establishing fees, the commission shall consult with a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives.

(4) The commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The State Board of Equalization, in accordance with Part 22.5 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, shall collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Marine Invasive Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Marine Invasive Species Control Fund.

SEC. 24. The heading of Chapter 5 (commencing with Section 71216) of Division 36 of the Public Resources Code is amended to read:

CHAPTER 5. CIVIL AND CRIMINAL PENALTIES AND LIABILITY

SEC. 25. Section 71216 of the Public Resources Code is amended to read:

71216. (a) Except as provided in subdivision (b) or (c), any person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount which may not exceed five thousand dollars ($5,000) for each

violation. Each day of a continuing violation constitutes a separate violation.

(b) Any person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount which may not exceed five hundred dollars ($500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) Any person who, knowingly and with intent to deceive, falsifies a ballast water control report form, or knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by this division, may be liable for an administrative civil penalty in an amount which may not exceed five thousand dollars ($5,000) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The executive officer of the commission may issue a complaint to any person on whom civil liability may be imposed pursuant to this division. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. A person served with a complaint pursuant to this subdivision may, within 30 days after service of the complaint, request a hearing by filing with the executive officer a notice of defense, as described in Section 11506 of the Government Code. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period. If a hearing is requested by the person, it shall be conducted within 30 days after the executive officer receives the notice of defense. If no notice of defense is filed within 30 days after service of the complaint, the executive officer shall issue an order setting liability in the amount proposed in the complaint unless the executive officer and the person have entered into a settlement agreement, in which case the executive officer shall issue an order setting liability in the amount specified in the settlement agreement. If the person has not filed a notice of defense or if the executive officer and the person have entered into a settlement agreement, the order may not be subject to review by a court or agency.

(e) A hearing required under this section shall be conducted by an independent hearing officer, in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty.

After conducting a hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount, if any, of the civil penalty to be imposed.

(f) Orders setting civil liability and issued pursuant to this section are effective and final upon issuance. The violator shall pay any penalty within 30 days of service, unless he or she seeks judicial review pursuant to subdivision (g), in which case he or she shall pay any penalty within 30 days of service of the court's order setting civil liability. Copies of the orders shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer that the person served is liable for a civil penalty, a person so served may file a petition for writ of mandate for review of the decision pursuant to Section 11523 of the Government Code. A person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate may not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) An order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing date of the complaint as specified in subdivision (d).

(i) A provision of this chapter or a ruling of the executive officer may not be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the executive officer, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil and criminal penalties against a person who violates this division.

(j) In lieu of a complaint under subdivision (d) to impose administrative civil penalties set forth in subdivisions (a), (b), and (c), the Attorney General, at the request of the commission, may bring an action in superior court, in the name of the People of the State of California, to enjoin a violation of this division, seek necessary remedial

action by a person who violates this division, or seek civil penalties in the amounts set forth in subdivisions (a), (b), and (c).

SEC. 26. Section 71217 is added to the Public Resources Code, to read:

71217. A person who violates subdivision (c) of Section 71216 is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than one year.

SEC. 27. Section 71271 of the Public Resources Code is amended to read:

71271. This division 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. If a federal program and regulations similar to the program and regulations developed pursuant to this division are established and implemented prior to January 1, 2010, the commission shall submit a report to the Legislature within eight months of the implementation of the federal program. The report shall compare the federal program with the program described in this division and make a finding as to the federal program's relative effectiveness in preventing the introduction of marine invasive species from vessels visiting California. The commission shall recommend repeal of the program described in this division only if it finds that the federal program is equally or more effective at implementing and funding effective controls on the release of aquatic invasive species into the waters of the state than the program described in this division.

SEC. 28. Section 44000 of the Revenue and Taxation Code is amended to read:

44000. This part shall be known, and may be cited, as the Marine Invasive Species Fee Collection Law.

SEC. 29. Section 44005 of the Revenue and Taxation Code is amended to read:

44005. Except as authorized in Section 44006, the fee imposed on owners or operators of vessels pursuant to Section 71215 of the Public Resources Code is due and payable to the board 30 days from the date of assessment by the board or the board's agent.

SEC. 30. Section 44007 of the Revenue and Taxation Code is amended to read:

44007. All fees, interest, and penalties imposed and all fees required to be paid to the state pursuant to Section 71215 of the Public Resources Code shall be paid in the form of remittances payable to the board. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Marine Invasive Species Control Fund.

SEC. 31. Section 44008 of the Revenue and Taxation Code is amended to read:

44008. This part 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; provided, however, this part shall remain applicable for the collection of assessments, the liability for which accrued prior to January 1, 2010; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to this part.

SEC. 32. 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 492

An act to amend Section 31220 of, and to amend the heading of Chapter 5.5 (commencing with Section 31220) of Division 21 of, the Public Resources Code, relating to natural resources.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. The heading of Chapter 5.5 (commencing with Section 31220) of Division 21 of the Public Resources Code is amended to read:

CHAPTER 5.5. INTEGRATED COASTAL AND MARINE RESOURCES PROTECTION

SEC. 2. Section 31220 of the Public Resources Code is amended to read:

31220. (a) In order to improve and protect coastal and marine water quality and habitats, the conservancy may undertake coastal watershed and coastal and marine habitat water quality protection and restoration projects or award grants for those projects, consistent with this chapter. Except for projects described in paragraph (7), (8), or (9), of subdivision (b), the conservancy shall consult with the State Water Resources

Control Board in the development of the project or grant to ensure consistency with Chapter 3 (commencing with Section 30915) of Division 20.4 of the Public Resources Code.

(b) The conservancy may undertake a project or award a grant for a project under this section only if the project does one or more of the following:

(1) Reduces contamination of waters within the coastal zone, including, but not limited to, coastal and near shore waters.

(2) Protects or restores fish and wildlife habitat within coastal and marine waters and coastal watersheds, including, but not limited to, permit coordination projects for watershed restoration.

(3) Reduces threats to coastal and marine fish and wildlife.

(4) Reduces unnatural erosion and sedimentation of coastal watersheds or contributes to the reestablishment of natural erosion and sediment cycles.

(5) Provides for monitoring and mapping of coastal currents, marine habitats, and marine wildlife, in order to facilitate the protection and enhancement of resources within the coastal zone. A project considered under this paragraph shall be implemented in consultation with the Department of Fish and Game.

(6) Acquires, protects, and restores coastal wetlands, riparian areas, floodplains, and other sensitive watershed lands, including watershed lands draining to sensitive coastal or marine areas.

(7) Reduces the impact of population and economic pressures on coastal and marine resources.

(8) Provides for public access compatible with resource protection and restoration objectives.

(9) Provides for the construction or expansion of nature centers or research facilities that emphasize conservation education or research activities focusing on the marine portion of the coastal zone or the land and ocean interface.

(c) Projects funded pursuant to this section shall be consistent with the Integrated Watershed Management Program established pursuant to Section 30947, local watershed management plans, if available, and water quality control plans adopted by the State Water Resources Control Board and regional water quality control boards, and shall include a monitoring and evaluation component.

CHAPTER 493

An act to amend Sections 30940, 30947, and 30950 of the Public Resources Code, and to amend Section 79543 of, and to add Section

79563.5 to, the Water Code, and to repeal Section 7 of Chapter 727 of the Statutes of 2002, relating to water quality.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 30940 of the Public Resources Code is amended to read:

30940. The board may award grants to public agencies or nonprofit organizations for the purposes of improving agricultural water quality through monitoring, demonstration projects, research, construction of agricultural drainage improvements, and for projects to reduce pollutants in agricultural drainage water through reuse, integrated management, or treatment. Grants made pursuant to this section may be used to provide matching funds for federal grant programs. The board, in consultation with the Department of Food and Agriculture and the program advisory review board established pursuant to Section 593 of the Food and Agricultural Code, shall develop criteria for evaluating projects considered for grants under this section.

SEC. 2. Section 30947 of the Public Resources Code is amended to read:

30947. (a) The Integrated Watershed Management Program is hereby established. Upon appropriation by the Legislature, funds allocated to the program may be used by the board, subject to the terms of the memorandum of understanding executed pursuant to Section 30946 to award grants to public agencies and nonprofit organizations for the development of local watershed management plans that meet the requirements of subdivision (c) of Section 79078 of the Water Code, and for the implementation of watershed protection and water management projects that include one or more of the following elements:

(1) Stormwater capture and treatment.

(2) Nonpoint source pollution reduction, management, and monitoring.

(3) Groundwater recharge and management projects.

(4) Water banking, exchange, and reclamation, and improvement of water quality.

(5) Vegetation management to improve watershed efficiency, aquatic and terrestrial habitat, the creation and enhancement of wetlands, and the acquisition, protection, and restoration of open space.

(6) Planning and implementation of multipurpose flood control programs that protect property and improve water quality and stormwater capture and percolation, and protect or improve wildlife habitat.

(7) Watershed management planning and implementation.

(8) Demonstration projects to develop new water treatment distribution and nonpoint source pollution control methods.

(9) Erosion sediment control and stream enhancement projects, and permit coordination programs to facilitate watershed restoration projects that implement board approved management measures for polluted runoff.

(10) Monitoring, collection, and analysis of water quality and pollutant transport in groundwater and surface water.

(11) Native fisheries enhancement or improvement projects, and projects to restore other threatened species.

(12) Water conservation, water use efficiency, and water supply reliability.

(13) An enforceable waste discharge program, by a person who is subject to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code and for whom the board has a name and address, that implements best management practices and includes all of the following:

(A) A clear description of how a project will achieve and maintain water quality standards.

(B) A monitoring component that assesses the effectiveness of adopted practices.

(C) Submission of a report of waste discharge to the appropriate regional water quality control board.

(b) Upon completion of the project, the grantee shall submit a report to the board that summarizes the completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the grantee in accordance with the project monitoring and reporting plan, including, but not limited to, a determination of the effectiveness of the project in preventing or reducing pollution and the results of the monitoring program. The board shall make the report available to the public, watershed groups, and federal, state, and local agencies.

SEC. 3. Section 30950 of the Public Resources Code, as added by Section 1 of Chapter 727 of the Statutes of 2002, is amended to read:

30950. (a) For the purposes of this article, ''small community'' means a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less, with a financial hardship, as determined by the board.

(b) The board may award grants under this article to assist small communities in complying with groundwater contaminant level requirements.

(c) The board may award grants under this article to local public agencies and private not-for-profit water companies.

(d) The board shall give priority to the following types of projects:

(1) Projects to provide an alternate source of water or to treat water where the existing supply of groundwater exceeds the maximum contaminant level of arsenic.

(2) Projects to provide an alternate source of water or to treat water where the existing supply of groundwater exceeds the maximum contaminant level for nitrate.

(3) Projects identified by the board, in consultation with the State Department of Health Services, as having a priority to address the needs of small community water systems.

(e) The board may make funds available under this article in each fiscal year to provide technical assistance or planning grants, or both, to small communities.

SEC. 4. Section 79543 of the Water Code is amended to read:

79543. (a) The sum of one hundred million dollars ($100,000,000) shall be available for appropriation by the Legislature from the fund to the board for the purpose of financing projects that restore and protect the water quality and environment of coastal waters, estuaries, bays and nearshore waters, and groundwater.

(b) All expenditures, grants, and loans made pursuant to this section shall be consistent with the requirements of Article 5 (commencing with Section 79148) of Chapter 7 of Division 26.

(c) Of the money made available pursuant to this section, not less than twenty million dollars ($20,000,000) shall be expended to implement priority actions specified in the Santa Monica Bay Restoration Plan. Money appropriated pursuant to this subdivision shall be allocated as recommended by the Santa Monica Bay Restoration Commission.

(d) Money made available pursuant to this section shall supplement, not supplant, money appropriated or available pursuant to that Article 5 (commencing with Section 79148), and no money appropriated pursuant to this section shall be used for a project for which an appropriation was made pursuant to that Article 5 (commencing with Section 79148).

SEC. 5. Section 79563.5 is added to the Water Code, to read:

79563.5. (a) The board, to the extent that funds are appropriated pursuant to Section 79563 of the Water Code for purposes that are consistent with this section, shall fund the development of one or more integrated coastal watershed management plans.

(b) The plans shall be designed to allow for the integration of projects funded by the State Coastal Conservancy pursuant to Chapter 5.5 (commencing with Section 31220) of Division 21 of the Public Resources Code, and projects funded by the board pursuant to Chapter

3 (commencing with Section 30915) and Article 5 (commencing with Section 30945) of Chapter 4, of Division 20.4 of the Public Resources Code, within one or more coastal regions.

(c) The planning areas shall be selected by the board in consultation with the State Coastal Conservancy and the Department of Fish and Game and shall include coastal watersheds that influence water quality in areas of special biological significance.

(d) The board may only expend funds for the purposes of this section to the extent the board determines that the expenditures are consistent with the requirements of this chapter.

SEC. 6. Section 7 of Chapter 727 of the Statutes of 2002 is repealed.

SEC. 7. The State Water Resources Control Board may only expend funds from the proceeds of a bond act for the purposes of Division 20.4 (commencing with Section 30901) of the Public Resources Code to the extent that the board determines that the expenditures are consistent with the requirements of the bond act and Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code.

CHAPTER 494

An act to add Division 39 (commencing with Section 72500) to the Public Resources Code, relating to vessels.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Division 39 (commencing with Section 72500) is added to the Public Resources Code, to read:

DIVISION 39. PROHIBITED RELEASE OF WASTES FROM LARGE PASSENGER VESSELS

CHAPTER 1. FINDINGS AND DECLARATIONS

72500. The Legislature finds and declares all of the following:

(a) Large passenger vessels produce considerable amounts of waste, including graywater, sewage, and other forms of solid and liquid waste.

(b) California is home to four of the 13 National Marine Sanctuaries. These areas support some of the world's most diverse marine ecosystems

and are home to numerous mammals, seabirds, fish, invertebrates, and plants.

(c) The release of waste from large passenger vessels results in substantial damage to these valuable resources.

(d) In order to protect public health and the environment, it is in the public interest to prohibit large passenger vessels from releasing waste into marine sanctuaries.

(e) The protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of hazardous waste and other waste, into the marine waters of the state and marine sanctuaries, should be prohibited.

CHAPTER 2. DEFINITIONS

72505. Unless the context otherwise requires, the following definitions govern this division:

(a) ''Board'' means the State Water Resources Control Board.

(b) ''Hazardous waste'' has the meaning set forth in Section 25117 of the Health and Safety Code, but does not include sewage.

(c) ''Large passenger vessel'' or ''vessel'' means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) ''Marine waters of the state'' means ''coastal waters'' as defined in Section 13181 of the Water Code.

(e) ''Marine sanctuary'' means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(f) ''Medical waste'' means medical waste subject to regulation pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(g) ''Operator'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(h) ''Other waste'' means photography lab chemicals, dry cleaning chemicals, or medical waste.

(i) ''Owner'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) ''Release'' means discharging or disposing of wastes into the environment.

(k) ''Waste'' means hazardous waste and other waste.

CHAPTER 3. PROHIBITED RELEASES

72520. An owner or operator of a large passenger vessel may not release, or permit anyone to release, from the vessel, into the marine waters of the state or a marine sanctuary, either of the following:

(a) Hazardous waste.

(b) Other waste.

72521. If a large passenger vessel releases hazardous waste or other waste into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

(a) Date of the release.

(b) Time of the release.

(c) Location of the release.

(d) Volume of the release.

(e) Source of the release.

(f) Remedial actions taken to prevent future releases.

CHAPTER 4. PENALTIES

72530. (a) A person who violates Section 72520 is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought by the Attorney General upon complaint or request by the Department

of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

CHAPTER 5. MISCELLANEOUS

72540. (a) This division does not apply to a large passenger vessel that operates in the marine waters of the state solely in innocent passage.

(b) For purposes of this section, a vessel is engaged in innocent passage if its operation in state waters would constitute innocent passage under either the Convention on the Territorial Sea and Contiguous Zone, dated April 29, 1958, or the United Nations Convention on the Law of the Sea, dated December 10, 1982.

72541. The board may adopt regulations to carry out this division.

72542. The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of waste by large passenger vessels in all of the waters in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary; and, request, if necessary, approval of the state's prohibition of the release of waste in the marine sanctuaries.

CHAPTER 495

An act to amend Sections 646.91, 836, and 12021 of the Penal Code, and to amend Section 15657.03 of the Welfare and Institutions Code, relating to firearms.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 646.91 of the Penal Code is amended to read:

646.91. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) ''To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application.''

(B) ''To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application. You may not own, possess, purchase or receive, or attempt to purchase or receive a firearm while this order is in effect.''

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(*l*) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(m) ''Judicial officer,'' as used in this section, means a judge, commissioner, or referee.

(n) A person subject to an emergency protective order under this section shall not own, possess, purchase, or receive a firearm while the order is in effect.

(o) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including, but not limited to, picketing and hand billing.

(p) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(q) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

SEC. 2. 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 Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions 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. 3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision.

However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before

the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied

by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic

Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty

of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the

department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective

order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any

firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief

is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but

who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor

violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence,

and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted

the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 of 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. T

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the

intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a

county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The

order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the

use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the

hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a

ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protection order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any

other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.6. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who

is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the

prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to

facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or

injunction issued pursuant to Section 527.6 of 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the

provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3.7. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one

thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense

being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall

include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order

issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, ''protective order'' means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling 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 petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) 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 a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the

petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order, are identical to the temporary restraining order, except for the duration of the order, then the 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.

(2) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

''NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED.

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 EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS ____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT ____.''

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or

termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(*l*) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the

Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (p).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, or receiving, or attempting to purchase or receive a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other 7matters required by this section. The petition and response forms shall be simple and concise.

SEC. 4.1. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, ''protective order'' means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling 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 petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) 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 a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either

for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order, are identical to the temporary restraining order, except for the duration of the order, then the 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.

(2) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED. 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 EMERGENCY PROTECTIVE ORDER,

A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT _____.''

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(*l*) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (p).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possess pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 5. (a) Section 3.1 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 226. 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 12021 of the Penal Code, (3) AB 319 and SB 238 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 226, in which case Sections 3, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 238. 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 12021 of the Penal Code, (3) AB 319 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 238, in which case Sections 3, 3.1, 3.3, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 319. 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 12021 of the Penal Code, (3) SB 226 and SB 238 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 319, in which case Sections 3, 3.1, 3.2, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(d) Section 3.4 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, SB 226, and SB 238. 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 12021 of the Penal Code, (3) AB 319 is not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 226, and SB 238, in which case Sections 3, 3.1, 3.2, 3.3, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(e) Section 3.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, SB 226, and AB 319. 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 12021 of the Penal Code, (3) SB 238 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 226, and AB 319, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.6, and 3.7 of this bill shall not become operative.

(f) Section 3.6 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, SB 238, and AB 319. 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 12021 of the Penal Code, (3) SB 226 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 238, and AB 319, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.7 of this bill shall not become operative.

(g) Section 3.7 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, SB 226, SB 238, and AB 319. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) all four bills amend Section 12021 of the Penal Code, and (3) this bill is enacted after SB 226, SB 238, and AB 319, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6 of this bill shall not become operative.

SEC. 6. Section 4.1 of this bill incorporates amendments to Section 15657.03 of the Welfare and Institutions Code proposed by both this bill and SB 226. 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 15657.03 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 226, in which case Section 4 of this bill shall not become operative.

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 496

An act to amend, repeal, and add Sections 654 and 654.05 of, and to add Section 654.03 to, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 654 of the Harbors and Navigation Code is amended to read:

654. (a) The exhaust of every internal combustion engine used on any motorized recreational vessel shall be effectively muffled at all times to prevent any excessive or unusual noise and as may be necessary to comply with Section 654.05.

(b) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where the preparations occur.

(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. 2. Section 654 is added to the Harbors and Navigation Code, to read:

654. (a) (1) For the purposes of this section, a ''muffler'' or ''muffler system'' is a sound suppression device or system that is designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and prevents excessive or unusual noise.

(2) For the purposes of this section, an underwater through-the-propeller-hub exhaust outlet system is a muffler system.

(b) A motorized recreational vessel that is operated in or upon the inland waters, or in or upon ocean waters that are within one mile of the coastline of the state shall be equipped at all times with a muffler or a muffler system that is all of the following:

(1) In good working condition.

(2) In constant operation.

(3) Installed in a manner that effectively brings the vessel into compliance with Section 654.05.

(c) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where the preparations occur.

(d) This section shall become operative on January 1, 2005.

SEC. 3. Section 654.03 is added to the Harbors and Navigation Code, to read:

654.03. (a) A person may not manufacture for sale a motorized recreational vessel that is not equipped with a muffler or muffler system, as defined in subdivision (a) of Section 654, that brings the vessel into compliance with paragraph (2) of subdivision (a) of Section 654.05, except as authorized under subdivision (b).

(b) A person may manufacture for sale a motorized recreational vessel that is not equipped as required under subdivision (a) if the vessel is designed, manufactured, and sold for the sole purpose of competing in racing events.

(c) A person may not sell a vessel that is exempted under subdivision (b) unless there is compliance with both of the following:

(1) The sales agreement includes a statement that the vessel is designed, manufactured, and sold for the sole purpose of competing in racing events and may not be operated in or upon the inland waters, or in or upon ocean waters that are within one mile of the coastline of the state, except under the conditions described in subdivision (c) of Section 654.

(2) The statement described in paragraph (1) is signed by both the buyer and the seller.

(d) Both the buyer and the seller of a vessel exempted under subdivision (b) shall maintain copies of the sales agreement described in paragraph (1) of subdivision (c).

(e) A person may not operate a vessel that is exempted under subdivision (b) unless a copy of the sales agreement described in paragraph (1) of subdivision (c) is on board the vessel.

(f) A person may not operate a vessel that is exempted under subdivision (b) in or upon the inland waters, or in or upon ocean waters within one mile of the coastline of the state, except under the conditions described in subdivision (c) of Section 654.

(g) This section shall become operative on January 1, 2005.

SEC. 4. Section 654.05 of the Harbors and Navigation Code is amended to read:

654.05. (a) A person may not operate a motorized recreational vessel in or upon the inland waters of this state in a manner that exceeds the following noise levels:

(1) For engines manufactured before January 1, 1976, a noise level of 86 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(2) For engines manufactured on or after January 1, 1976, and before January 1, 1978, a noise level of 84 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(3) For engines manufactured on or after January 1, 1978, a noise level of 82 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(b) Testing procedures employed to determine noise levels shall be in accordance with the Exterior Sound Level Measurement Procedure For Pleasure Motorboats of the Society of Automotive Engineers in its recommended practice designated SAE J34. The department may, by regulation, revise the measurement procedure when deemed necessary to adjust to advances in technology.

(c) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where the preparations occur.

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

SEC. 5. Section 654.05 is added to the Harbors and Navigation Code, to read:

654.05. (a) A person may not operate a motorized recreational vessel in or upon the inland waters, or in or upon ocean waters that are within one mile of the coastline of the state, in a manner that exceeds the following noise levels:

(1) For engines manufactured before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice SAE J2005 (Stationary Sound Level Measurement Procedure for Pleasure Motorboats).

(2) For engines manufactured on or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice SAE J2005 (Stationary Sound Level Measurement Procedure for Pleasure Motorboats).

(3) A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice SAE J1970 (Shoreline Sound Level Measurement Procedure). However, a measurement of noise level that is in compliance with this paragraph does not preclude the conducting of a test of noise levels under paragraph (1) or (2).

(b) A law enforcement officer utilizing a decibel measuring device for the purposes of enforcing this section shall be knowledgeable and proficient in the use of that device.

(c) The department may, by regulation, revise the measurement procedure when deemed necessary to adjust to advances in technology.

(d) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where these preparations occur.

(e) This section shall become operative on January 1, 2005.

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 497

An act to add and repeal Chapter 5.3 (commencing with Section 13368) of Division 7 of the Water Code, relating to water.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

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

(a) San Diego Bay's 23 square mile area and its 27 miles of shoreline represent vital environmental, economic, and national security resources for all of California and the nation.

(b) San Diego Bay is the heart of San Diego's tourism industry, an industry that contributes more than $5 billion annually to the region and the state.

(c) San Diego Bay is home to three major shipyards and numerous boatyards and marinas that represent both a major economic force as well as a key part of tourism and recreation.

(d) San Diego Bay is the home of the largest port of the United States Navy's Pacific Fleet, including the home port of three aircraft carriers and 50 other surface ships and submarines. This large concentration of ships forms the basis of an extensive shore support system, including aircraft repair, ship maintenance, supply, research, and other key naval

services, which accounts for more than $5.5 billion in annual expenditures in San Diego County alone.

(e) One study established that 27 percent of San Diego County's gross regional product and 250,000 jobs are attributable to San Diego Bay tideland businesses and the United States Navy.

(f) Tremendous strides have been made in cleaning up San Diego Bay. Up until the 1960s, environmental laws and regulations did not protect San Diego Bay from impacts from sewage, garbage, and other discharges that had a detrimental impact on the health of the bay. Since that time, efforts by federal, state, regional, and local governments and environmental organizations have led to a dramatic improvement in water quality and species diversity. Whereas a 1973 study found 38 different fish species in San Diego Bay, a 1999 study found 78 different fish species in that bay. In addition, the generally warm and hypersaline waters of south San Diego Bay offer a warm water refuge for a number of tropical species, including green sea turtles and sea horses, making it unique among all other southern California bays.

(g) The current regulatory framework for San Diego Bay does not address adequately some basic macrolevel ecosystem matters such as the overall health of the bay and therefore does not provide a baseline to evaluate the need for additional regulation of the bay.

(h) Some decisions regarding San Diego Bay have been based on published reports that do not present an adequate basis for policy development.

(i) Extensive data collected under the Bay Protection and Toxic Hotspots Cleanup Program revealed serious contamination of portions of San Diego Bay. It is necessary to take actions in these areas to ensure restoration of marine life health to San Diego Bay.

(j) It is necessary to undertake an independent assessment of San Diego Bay for the purpose of making comprehensive decisions with regard to future actions to improve habitat and species diversity in the bay.

(k) The San Diego Regional Water Quality Control Board has adopted discharge permits for the United States Navy facilities on San Diego Bay. These permits impose effluent limitations for acute toxicity applicable to discharges of stormwater runoff associated with industrial activity, and require monitoring of these discharges for acute toxicity. Pursuant to the discharge permits, the United States Navy has four years after adoption to propose alternative effluent limitations for acute toxicity in discharges of stormwater runoff associated with industrial activity. While the United States Navy's willingness to undertake that effort is noted, it is not appropriate for the United States Navy to propose a new acute toxicity effluent limitation independent of other major stakeholders that would be affected by that standard.

(*l*) It is the intent of the Legislature that this act will support efforts to implement water quality standards and objectives in a fair and equitable manner that ensures full protection of all beneficial uses of the bay.

SEC. 2. Chapter 5.3 (commencing with Section 13368) is added to Division 7 of the Water Code, to read:

CHAPTER 5.3. SAN DIEGO BAY ADVISORY COMMITTEE FOR ECOLOGICAL ASSESSMENT

13368. (a) The San Diego Bay Advisory Committee for Ecological Assessment is hereby established.

(b) The committee shall prepare a report on all of the following:

(1) An evaluation of existing and historic data and trends in the overall health of San Diego Bay, including, but not limited to, trends in pollutant levels and trends in the numbers and diversity of species.

(2) The identification of habitat enhancement projects in the Integrated Natural Resources Management Plan for San Diego Bay that may be necessary to provide increased population and diversity for species within San Diego Bay.

(3) An assessment of, and recommendations for, including feasibility and economic practicability of, the best available technology that is economically available and the best conventional pollution control technology related to stormwater treatment systems meeting toxicity standards.

(c) For the purposes of carrying out subdivision (b), the committee shall consider and make use of the Integrated Natural Resources Management Plan for San Diego Bay prepared by the United States Navy in conjunction with numerous stakeholders.

(d) Upon the request of the United States Navy, the committee may provide oversight and assistance in the Navy's development of alternative acute toxicity effluent limitations for discharges of stormwater runoff associated with industrial activity, as authorized by the San Diego Regional Water Quality Control Board, in approval of the National Pollutant Discharge Elimination System permits for Naval Base Point Loma, Naval Base San Diego, and Naval Base Coronado.

(e) (1) The committee shall be chaired by the Chairperson of the San Diego Unified Port District. The following entities may each appoint one representative to the committee:

(A) The San Diego City Council.

(B) The City of Chula Vista.

(C) The City of Coronado.

(D) The City of Imperial Beach.

(E) The City of National City.

(F) The Environmental Health Coalition.
(G) The San Diego Baykeeper.
(H) The San Diego Audubon Society.
(I) The San Diego Chapter of the Surfrider Foundation.
(J) The Sierra Club.
(K) The San Diego Port Tenants Association.
(L) The Industrial Environmental Association.
(M) The San Diego Convention and Visitors Bureau.
(N) Scripps Institute of Oceanography.
(O) City of San Diego Metropolitan Wastewater Joint Powers Authority.
(P) The California Coastal Commission.

(2) The San Diego County Board of Supervisors may appoint two representatives to the committee. One of the persons appointed pursuant to this paragraph shall be a recreational boat owner who resides in San Diego County.

(3) The following entities may each appoint one nonvoting member to the committee:
(A) The United States Navy.
(B) The Department of Fish and Game.
(C) The United States Fish and Wildlife Service.
(D) The National Marine Fisheries Service.
(E) The University of California and California State University at San Diego may each appoint one nonvoting member.

(4) The San Diego Regional Water Quality Control Board is encouraged to participate in the proceedings of committee.

(f) Committee members may not be compensated for their services or be reimbursed for any expenses incurred in the performance of their duties pursuant to this chapter.

(g) (1) Staffing for the committee shall be provided by the San Diego Unified Port District at the direction of the committee. The committee may accept grant funds and contract for professional services to carry out this chapter. The San Diego Unified Port District shall administer the grants made to the committee.

(2) Not more than 3 percent of the total amount of money received by the committee may be used to pay costs incurred in connection with the administration of the grants.

(h) The report required by subdivision (b) shall be submitted, on or before December 31, 2005, to all of the following:

(1) The Chairpersons of the Assembly Committee on Water, Parks and Wildlife, the Assembly Committee on Environmental Safety and Toxic Materials, the Senate Committee on Environmental Quality, and the Senate Committee on Agriculture and Water Resources.

(2) The San Diego Regional Water Quality Control Board.

(3) The state board.

(4) The California Coastal Commission.

13368.5. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. 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 498

An act to amend Sections 527.6 and 527.8 of, and to add Section 527.9 to, the Code of Civil Procedure, to amend Section 6389 of the Family Code, to amend Sections 136.2, 273.6, and 12021 of the Penal Code, and to amend Section 15657.03 of the Welfare and Institutions Code, relating to firearms.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 527.6 of the Code of Civil Procedure, as amended by Section 1 of Chapter 1009 of the Statutes of 2002, is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, ''harassment'' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section if there are allegations or threats of domestic violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party

at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of domestic violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of

the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(*l*) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff's right to use other existing civil remedies.

(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or 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. An order issued by a court pursuant to this section that was not issued on forms adopted by the Judicial Council and approved by the Department of Justice is not unenforceable for that reason.

(o) Information on any temporary restraining order or injunction relating to harassment or 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.

(p) There shall be no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoke in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or

restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(q) (1) Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

(A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, ''sexual assault'' means the offenses enumerated in Section 1036.2 of the Evidence Code.

(C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

(r) 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 527.6 of the Code of Civil Procedure, as added by Section 2 of Chapter 1009 of the Statutes of 2002, is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, ''harassment'' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit

with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of

the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(*l*) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff from using other existing civil remedies.

(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or 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.

(o) Information on any temporary restraining order or injunction relating to harassment or 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.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoke in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or

restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

(q) This section shall become operative January 1, 2007.

SEC. 3. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.

(b) For the purposes of this section:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms ''employer'' and ''employee'' mean persons defined in Section 350 of the Labor Code. ''Employer'' also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. ''Employee'' also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, ''employee'' also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with

subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the employee.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(j) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(k) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(*l*) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(m) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or 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.

(o) Information on any temporary restraining order or injunction relating to harassment or 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.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoke in any other manner that has placed the employee in reasonable fear of violence, and that seeks protective or restraining orders or injunctions restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

SEC. 4. Section 527.9 is added to the Code of Civil Procedure, to read:

527.9. (a) A person subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2 of the Penal Code, or Section 15657.03 of the Welfare and Institutions Code, shall relinquish the firearm pursuant to this section.

(b) If the person subject to the order or injunction is present in court at a duly noticed hearing, the court shall order the person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. If the respondent is not present at the hearing, the respondent shall relinquish the firearm within 48 hours after being served with the order. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in Section 6218 of the Family Code remain in effect or bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

(c) A local law enforcement agency may charge the person subject to the order or injunction a fee for the storage of any firearm relinquished pursuant to this section. The fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, ''actual cost'' means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the person relinquishing the firearm.

(d) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(e) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall prohibit the person from possessing or

controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is used against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(f) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(g) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within

five days of presenting the local law enforcement agency with a bill of sale.

SEC. 5. Section 6389 of the Family Code is amended to read:

6389. (a) A person subject to a protective order, as defined in Section 6218, shall not own, possess, purchase, or receive a firearm while that protective order is in effect. Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(b) The Judicial Council shall provide a notice on all forms requesting a protective order that, at the hearing for a protective order, the respondent shall be ordered to relinquish possession or control of any firearms and not to purchase or receive or attempt to purchase or receive any firearms for a period not to exceed the duration of the restraining order.

(c) If the respondent is present in court at a duly noticed hearing, the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. If the respondent is not present at the hearing, the respondent shall relinquish the firearm within 48 hours after being served with the order. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in Section 6218 remain in effect or bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

(d) If the respondent declines to relinquish possession of any firearm based upon the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm required under this section.

(e) A local law enforcement agency may charge the respondent a fee for the storage of any firearm pursuant to this section. This fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, ''actual cost'' means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a

licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

(f) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(g) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is used against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(h) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the

officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(i) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

(j) The disposition of any unclaimed property under this section shall be made pursuant to Section 1413 of the Penal Code.

(k) The return of a firearm to any person pursuant to subdivision (g) shall not be subject to the requirements of subdivision (d) of Section 12072 of the Penal Code.

(*l*) If the respondent notifies the court that he or she owns a firearm that is not in his or her immediate possession, the court may limit the order to exclude that firearm if the judge is satisfied the respondent is unable to gain access to that firearm while the protective order is in effect.

(m) Any respondent to a protective order who violates any order issued pursuant to this section shall be punished under the provisions of subdivision (g) of Section 12021 of the Penal Code.

SEC. 6. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.

(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, ''immediate family members'' include the spouse, children, or parents of the victim or witness.

(g) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

Any order issued, modified, extended, or terminated by a court pursuant to this subdivision 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.

Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(i) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (i).

(j) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a ''no contact order'' issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(k) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 7. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or ''a credible threat'' of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by

both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with the provisions of Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, 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.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), 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. 8. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the

prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before

the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied

by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person

against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law

enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243,

244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that

the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall

not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for

prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief

is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment

and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision,

or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any

other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a

conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the

prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the

transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or

receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section

12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other

person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest

arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the

department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.6. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court

only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family

Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions

for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 8.7. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the

department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which

the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions

Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 9. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, ''protective order'' means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling 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 petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) 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 a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court

may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(j) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(k) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(*l*) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (p).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(m) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(n) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with Section 525) of the Code of Civil

Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(q) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 9.1. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, ''protective order'' means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling 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 petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) 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 a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date

of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order, are identical to the temporary restraining order, except for the duration of the order, then the 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.

(2) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED. 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 EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS ____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT ____."

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status

of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(*l*) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (p).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possess pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 10. (a) Section 8.1 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 1290. 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 12021 of the Penal Code, (3) AB 319 and SB 238 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290, in which case Sections 8, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7 of this bill shall not become operative.

(b) Section 8.2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 238. 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 12021 of the Penal Code, (3) AB 319 and AB 1290 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 238, in which case Sections 8, 8.1, 8.3, 8.4, 8.5, 8.6, and 8.7 of this bill shall not become operative.

(c) Section 8.3 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 319. 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 12021 of the Penal Code, (3) AB 1290 and SB 238 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 319, in which case Sections 8, 8.1, 8.2, 8.4, 8.5, 8.6, and 8.7 of this bill shall not become operative.

(d) Section 8.4 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290, and SB 238. 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 12021 of the Penal Code, (3) AB 319 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1290, and SB 238, in which case Sections 8, 8.1, 8.2, 8.3, 8.5, 8.6, and 8.7 of this bill shall not become operative.

(e) Section 8.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319, and SB 238. 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 12021 of the Penal Code, (3) AB 1290 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319, and SB 238, in which case Sections 8, 8.1, 8.2, 8.3, 8.4, 8.6, and 8.7 of this bill shall not become operative.

(f) Section 8.6 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319, and AB 1290. 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 12021 of the Penal Code, (3) SB 238 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319, and AB 1290, in which case Sections 8, 8.1, 8.2, 8.3, 8.4, 8.5, and 8.7 of this bill shall not become operative.

(g) Section 8.7 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319, AB 1290, and SB 238. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) all four bills amend Section 12021 of the Penal Code, and (3) this bill is enacted after AB 319, AB 1290, and SB 238, in which case Sections 8, 8.1, 8.2, 8.3, 8.4, 8.5, and 8.6 of this bill shall not become operative.

SEC. 11. Section 9.1 of this bill incorporates amendments to Section 15657.03 of the Welfare and Institutions Code proposed by both this bill and AB 1290. 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 15657.03 of the Welfare and Institutions Code, and (3)

this bill is enacted after AB 1290, in which case Section 9 of this bill shall not become operative.

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

CHAPTER 499

An act to amend Section 12101 of the Health and Safety Code, and to amend Sections 666.7, 11108.3, 12021, 12028, 12201, 12280, 12285, 12287, 12290, and 12301 of the Penal Code, relating to deadly weapons.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 12101 of the Health and Safety Code is amended to read:

12101. (a) No person shall do any one of the following without first having made application for and received a permit in accordance with this section:

(1) Manufacture explosives.

(2) Sell, furnish, or give away explosives.

(3) Receive, store, or possess explosives.

(4) Transport explosives.

(5) Use explosives.

(6) Operate a terminal for handling explosives.

(7) Park or leave standing any vehicle carrying explosives, except when parked or left standing in or at a safe stopping place designated as such by the Department of the California Highway Patrol under Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Application for a permit shall be made to the appropriate issuing authority.

(c) (1) A permit shall be obtained from the issuing authority having the responsibility in the area where the activity, as specified in subdivision (a), is to be conducted.

(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

(3) Every person who sells, gives away, delivers, or otherwise disposes of explosives to another person shall first be satisfied that the person receiving the explosives has a permit valid for that purpose. When the permit to receive explosives indicates that the intended storage or use of the explosives is other than in that area in which the permittee receives the explosives, the person who sells, gives away, delivers, or otherwise disposes of the explosives shall insure that the permit has been properly endorsed by a local issuing authority and, further, shall immediately send a copy of the record of sale to the issuing authority who originally issued the permit in the area of intended storage or use. The issuing authority in the area in which the explosives are received or sold shall not issue a permit for the possession, use, or storage of explosives in an area not within the authority's jurisdiction.

(d) In the event any person desires to receive explosives for use in an area outside of this state, a permit to receive the explosives shall be obtained from the State Fire Marshal.

(e) A permit may include any restrictions or conditions which the issuing authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives.

(f) A permit shall remain valid only until the time when the act or acts authorized by the permit are performed, but in no event shall the permit remain valid for a period longer than one year from the date of issuance of the permit.

(g) Any valid permit which authorizes the performance of any act shall not constitute authorization for the performance of any act not stipulated in the permit.

(h) An issuing authority shall not issue a permit authorizing the transportation of explosives pursuant to this section if the display of placards for that transportation is required by Section 27903 of the Vehicle Code, unless the driver possesses a license for the transportation

of hazardous materials issued pursuant to Division 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and 25115 of the Health and Safety Code, and the transporter is currently registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code.

(i) An issuing authority shall not issue a permit pursuant to this section authorizing the handling or storage of division 1.1, 1.2, or 1.3 explosives in a building, unless the building has caution placards which meet the standards established pursuant to subdivision (g) of Section 12081.

(j) (1) A permit shall not be issued to a person who meets any of the following criteria:

(A) He or she has been convicted of a felony.

(B) He or she is addicted to a narcotic drug.

(C) He or she is in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of the Penal Code.

(2) For purposes of determining whether a person meets any of the criteria set forth in this subdivision, the issuing authority shall obtain two sets of fingerprints on prescribed cards from all persons applying for a permit under this section and shall submit these cards to the Department of Justice. The Department of Justice shall utilize the fingerprint cards to make inquiries both within this state and to the Federal Bureau of Investigation regarding the criminal history of the applicant identified on the fingerprint card.

This paragraph does not apply to any person possessing a current certificate of eligibility issued pursuant to paragraph (4) of subdivision (a) of Section 12071 or to any holder of a dangerous weapons permit or license issued pursuant to Section 12095, 12230, 12250, 12286, or 12305 of the Penal Code.

(k) An issuing authority shall inquire with the Department of Justice for the purposes of determining whether a person who is applying for a permit meets any of the criteria specified in subdivision (j). The Department of Justice shall determine whether a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 2. Section 666.7 of the Penal Code is amended to read:

666.7. It is the intent of the Legislature that this section serve merely as a nonsubstantive comparative reference of current sentence enhancement provisions. Nothing in this section shall have any

substantive effect on the application of any sentence enhancement contained in any provision of law, including, but not limited to, all of the following: omission of any sentence enhancement provision, inclusion of any obsolete sentence enhancement provision, or inaccurate reference or summary of a sentence enhancement provision.

It is the intent of the Legislature to amend this section as necessary to accurately reflect current sentence enhancement provisions, including the addition of new provisions and the deletion of obsolete provisions.

For the purposes of this section, the term ''sentence enhancement'' means an additional term of imprisonment in the state prison added to the base term for the underlying offense. A sentence enhancement is imposed because of the nature of the offense at the time the offense was committed or because the defendant suffered a qualifying prior conviction before committing the current offense.

(a) The provisions listed in this subdivision imposing a sentence enhancement of one year imprisonment in the state prison may be referenced as Schedule A.

(1) Money laundering when the value of transactions exceeds fifty thousand dollars ($50,000), but is less than one hundred fifty thousand dollars ($150,000) (subpara. (A), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than one hundred thousand dollars ($100,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Felony conviction of willful harm or injury to a child, involving female genital mutilation (subd. (a), Sec. 273.4, Pen. C.).

(4) Prior conviction of felony hate crime with a current conviction of felony hate crime (subd. (e), Sec. 422.75, Pen. C.).

(5) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to so harm, obstruct, or interfere, personally causing the death, destruction, or serious physical injury of any horse or dog (subd. (c), Sec. 600, Pen. C.).

(6) Prior prison term with current felony conviction (subd. (b), Sec. 667.5, Pen. C.).

(7) Commission of any specified offense against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.9, Pen. C.).

(8) Showing child pornography to a minor prior to or during the commission or attempted commission of any lewd or lascivious act with the minor (subd. (a), Sec. 667.15, Pen. C.).

(9) Felony conviction of forgery, grand theft, or false pretenses as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster (subd. (a), Sec. 667.16, Pen. C.).

(10) Impersonating a peace officer during the commission of a felony (Sec. 667.17, Pen. C.).

(11) Felony conviction of any specified offense, including, but not limited to, forgery, grand theft, and false pretenses, as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by natural disaster with a prior felony conviction of any of those offenses (subd. (c), Sec. 670, Pen. C.).

(12) Commission or attempted commission of a felony while armed with a firearm (para. (1), subd. (a), Sec. 12022, Pen. C.).

(13) Personally using a deadly or dangerous weapon in the commission or attempted commission of a felony (para. (1), subd. (b), Sec. 12022, Pen. C.).

(14) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds fifty thousand dollars ($50,000) (para. (1), subd. (a), Sec. 12022.6, Pen. C.).

(15) Transferring, lending, selling, or giving any assault weapon to a minor (para. (2), subd. (a), Sec. 12280, Pen. C.).

(16) Manufacturing, causing to be manufactured, distributing, transporting, importing, keeping for sale, offering or exposing for sale, giving, or lending any assault weapon while committing another crime (subd. (d), Sec. 12280, Pen. C.).

(17) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11353.1, H.& S.C.).

(18) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds five hundred thousand dollars ($500,000) (para. (1), subd. (a), Sec. 11356.5, H.& S.C.).

(19) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice (subd. (a), Sec. 11379.9, H.& S.C.).

(20) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, when the commission of the offense occurs upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11380.1, H.& S.C.).

(21) Possessing for sale, or selling, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), when the commission of the offense occurs upon the grounds of a public park, public library, or oceanfront beach (para. (1), subd. (a), Sec. 11380.5, H.& S.C.).

(22) Causing bodily injury or death to more than one victim in any one instance of driving under the influence of any alcoholic beverage or drug (Sec. 23558, Veh. C.).

(23) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding fifty thousand dollars ($50,000), but less than one hundred fifty thousand dollars ($150,000) (subpara. (A), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(b) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or three years' imprisonment in the state prison may be referenced as Schedule B.

(1) Commission or attempted commission of a felony hate crime (subd. (a), Sec. 422.75, Pen. C.).

(2) Commission or attempted commission of a felony against the property of a public or private institution because the property is associated with a person or group of identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation (subd. (b), Sec. 422.75, Pen. C.).

(3) Felony conviction of unlawfully causing a fire of any structure, forest land, or property when the defendant has been previously convicted of arson or unlawfully causing a fire, or when a firefighter, peace officer, or emergency personnel suffered great bodily injury, or when the defendant proximately caused great bodily injury to more than one victim, or caused multiple structures to burn (subd. (a), Sec. 452.1, Pen. C.).

(4) Carrying a loaded or unloaded firearm during the commission or attempted commission of any felony street gang crime (subd. (a), Sec. 12021.5, Pen. C.).

(5) Personally using a deadly or dangerous weapon in the commission of carjacking or attempted carjacking (para. (2), subd. (b), Sec. 12022, Pen. C.).

(6) Being a principal in the commission or attempted commission of any specified drug offense, knowing that another principal is personally armed with a firearm (subd. (d), Sec. 12022, Pen. C.).

(7) Furnishing or offering to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony (Sec. 12022.4, Pen. C.).

(8) Selling, supplying, delivering, or giving possession or control of a firearm to any person within a prohibited class or to a minor when the firearm is used in the subsequent commission of a felony (para. (4), subd. (g), Sec. 12072, Pen. C.).

(9) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, heroin, cocaine, and cocaine base, or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11353.1, H.& S.C.).

(10) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor that resulted in a prison sentence with a current conviction of the same offense (subd. (a), Sec. 11353.4, H.& S.C.).

(11) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor with a current conviction of the same offense involving a minor who is 14 years of age or younger (subd. (b), Sec. 11353.4, H.& S.C.).

(12) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, phencyclidine (PCP), methamphetamine, and lysergic acid diethylamide (LSD), or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11380.1, H.& S.C.).

(13) Causing great bodily injury or a substantial probability that death could result by the knowing disposal, transport, treatment, storage, burning, or incineration of any hazardous waste at a facility without permits or at an unauthorized point (subd. (e), Sec. 25189.5, and subd. (c), Sec. 25189.7, H.& S.C.).

(c) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or five years' imprisonment in the state prison may be referenced as Schedule C.

(1) Wearing a bullet-resistant body vest in the commission or attempted commission of a violent offense (subd. (b), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while armed with a firearm or deadly weapon (subd. (b), Sec. 12022.3, Pen. C.).

(d) The provisions listed in this subdivision imposing a sentence enhancement of 16 months, or two or three years' imprisonment in the state prison may be referenced as Schedule D.

(1) Knowing failure to register pursuant to Section 186.30 and subsequent conviction or violation of Section 186.30, as specified (para. (1), subd. (b), Sec. 186.33, Pen. C.).

(e) The provisions listed in this subdivision imposing a sentence enhancement of two years' imprisonment in the state prison may be referenced as Schedule E.

(1) Money laundering when the value of the transactions exceeds one hundred fifty thousand dollars ($150,000), but is less than one million dollars ($1,000,000) (subpara. (B), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than one hundred fifty thousand dollars ($150,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Conviction of any specified felony sex offense that is committed after fleeing to this state under specified circumstances (subd. (d), Sec. 289.5, Pen. C.).

(4) Prior conviction of any specified insurance fraud offense with current conviction of willfully injuring, destroying, secreting, abandoning, or disposing of any property insured against loss or damage by theft, embezzlement, or any casualty with the intent to defraud or prejudice the insurer (subd. (b), Sec. 548, Pen. C.).

(5) Prior conviction of any specified insurance fraud offense with current conviction of knowingly presenting any false or fraudulent insurance claim or multiple claims for the same loss or injury, or knowingly causing or participating in a vehicular collision for the purpose of presenting any false or fraudulent claim, or providing false or misleading information or concealing information for purpose of insurance fraud (subd. (e), Sec. 550, Pen. C.).

(6) Causing serious bodily injury as a result of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim (subd. (g), Sec. 550, Pen. C.).

(7) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to cause great bodily injury, personally

causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 600, Pen. C.).

(8) Prior conviction of any specified offense with current conviction of any of those offenses committed against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (b), Sec. 667.9, Pen. C.).

(9) Prior conviction for sexual penetration with current conviction of the same offense committed against a person who is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.10, Pen. C.).

(10) Showing child pornography to a minor prior to or during the commission or attempted commission of continuous sexual abuse of the minor (subd. (b), Sec. 667.15, Pen. C.).

(11) Primary care provider in a day care facility committing any specified felony sex offense against a minor entrusted to his or her care (subd. (a), Sec. 674, Pen. C.).

(12) Commission of a felony offense while released from custody on bail or own recognizance (subd. (b), Sec. 12022.1, Pen. C.).

(13) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one hundred fifty thousand dollars ($150,000) (para. (2), subd. (a), Sec. 12022.6, Pen. C.).

(14) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11353.1, H.& S.C.).

(15) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds two million dollars ($2,000,000) (para. (2), subd. (a), Sec. 11356.5, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present (subd. (a), Sec. 11379.7, H.& S.C.).

(17) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11380.1, H.& S.C.).

(18) Prior felony conviction of any specified insurance fraud offense with a current conviction of making false or fraudulent statements concerning a workers' compensation claim (subd. (c), Sec. 1871.4, Ins. C.).

(19) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11760, Ins. C.).

(20) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11880, Ins. C.).

(21) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding one hundred fifty thousand dollars ($150,000), but less than one million dollars ($1,000,000) (subpara. (B), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(f) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or four years' imprisonment in the state prison may be referenced as Schedule F.

(1) Commission of a felony, other than a serious or violent felony, for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (A), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Acting in concert with another person or aiding or abetting another person in committing or attempting to commit a felony hate crime (subd. (c), Sec. 422.75, Pen. C.).

(3) Carrying a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device during the commission or attempted commission of any felony street gang crime (subd. (b), Sec. 12021.5, Pen. C.).

(g) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or five years' imprisonment in the state prison may be referenced as Schedule G.

(1) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than five hundred thousand dollars ($500,000) (para. (2), subd. (a), Sec. 186.11, Pen. C.).

(h) The provisions listed in this subdivision imposing a sentence enhancement of three years' imprisonment in the state prison may be referenced as Schedule H.

(1) Money laundering when the value of transactions exceeds one million dollars ($1,000,000), but is less than two million five hundred thousand dollars ($2,500,000) (subpara. (C), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Solicitation, recruitment, or coercion, of a minor to actively participate in a criminal street gang (subd. (d), Sec. 186.26, Pen. C.).

(3) Willfully mingling any poison or harmful substance which may cause death if ingested, or which causes the infliction of great bodily injury on any person, with any food, drink, medicine, or pharmaceutical product or willfully placing that poison or harmful substance in any spring, well, reservoir, or public water supply (para. (2), subd. (a), Sec. 347, Pen. C.).

(4) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (2), subd. (b), Sec. 368, Pen. C.).

(5) Maliciously driving or placing, in any tree, saw-log, shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws and causing bodily injury to another person other than an accomplice (subd. (b), Sec. 593a, Pen. C.).

(6) Prior prison term for violent felony with current violent felony conviction (subd. (a), Sec. 667.5, Pen. C.).

(7) Commission of any specified felony sex offense by a primary care provider in a day care facility against a minor entrusted to his or her care while voluntarily acting in concert with another (subd. (b), Sec. 674, Pen. C.).

(8) Commission or attempted commission of a felony while armed with an assault weapon or a machinegun (para. (2), subd. (a), Sec. 12022, Pen. C.).

(9) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one million dollars ($1,000,000) (para. (3), subd. (a), Sec. 12022.6, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony (subd. (a), Sec. 12022.7, Pen. C.).

(11) Administering by injection, inhalation, ingestion, or any other means, any specified controlled substance against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person for the purpose of committing a felony (Sec. 12022.75, Pen. C.).

(12) Commission of any specified sex offense with knowledge that the defendant has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of the offense (subd. (a), Sec. 12022.85, Pen. C.).

(13) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds five million dollars ($5,000,000) (para. (3), subd. (a), Sec. 11356.5, H.& S.C.).

(14) Prior conviction of any specified drug offense with current conviction of any specified drug offense (subds. (a), (b), and (c), Sec. 11370.2, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds one kilogram or 30 liters (para. (1), subd. (a), and para. (1), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds three gallons or one pound (para. (1), subd. (a), Sec. 11379.8, H.& S.C.).

(17) Four or more prior convictions of specified alcohol-related vehicle offenses with current conviction of driving under the influence and causing great bodily injury (subd. (c), Sec. 23566, Veh. C.).

(18) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding one million dollars ($1,000,000), but less than two million five hundred thousand dollars ($2,500,000) (subpara. (C), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(i) The provisions listed in this subdivision imposing a sentence enhancement of three, four, or five years' imprisonment in the state prison may be referenced as Schedule I.

(1) Commission of felony arson with prior conviction of arson or unlawfully starting a fire, or causing great bodily injury to a firefighter,

peace officer, other emergency personnel, or multiple victims, or causing the burning of multiple structures, or using an accelerator or ignition delay device (subd. (a), Sec. 451.1, Pen. C.).

(2) Commission or attempted commission of any specified drug offense while personally armed with a firearm (subd. (c), Sec. 12022, Pen. C.).

(3) Personally inflicting great bodily injury under circumstances involving domestic violence in the commission or attempted commission of a felony (subd. (e), Sec. 12022.7, Pen. C.).

(4) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to commit any of those offenses, upon the grounds of, or within 1,000 feet of, a school during school hours or when minors are using the facility (subd. (b), Sec. 11353.6, H.& S.C.).

(5) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to violate any of those offenses, involving a minor who is at least four years younger than the defendant (subd. (c), Sec. 11353.6, H.& S.C.).

(j) The provisions listed in this subdivision imposing a sentence enhancement of 3, 4, or 10 years' imprisonment in the state prison may be referenced as Schedule J.

(1) Commission or attempted commission of any felony while armed with a firearm and in the immediate possession of ammunition for the firearm designed primarily to penetrate metal or armor (subd. (a), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while using a firearm or deadly weapon (subd. (a), Sec. 12022.3, Pen. C.).

(3) Commission or attempted commission of a felony while personally using a firearm (para. (1), subd. (a), Sec. 12022.5, Pen. C.).

(4) Commission or attempted commission of any specified drug offense while personally using a firearm (subd. (c), Sec. 12022.5, Pen. C.).

(k) The provisions listed in this subdivision imposing a sentence enhancement of four years' imprisonment in the state prison may be referenced as Schedule K.

(1) Money laundering when the value of transactions exceeds two million five hundred thousand dollars ($2,500,000) (subpara. (D), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Prior conviction of willfully inflicting upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition with current conviction of that offense (subd. (b), Sec. 273d, Pen. C.).

(3) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds two million five hundred thousand dollars ($2,500,000) (para. (4), subd. (a), Sec. 12022.6, Pen. C.).

(4) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another person other than an occupant of a motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (1), subd. (b), Sec. 12022.9, Pen. C.).

(5) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another occupied motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (2), subd. (b), Sec. 12022.9, Pen. C.).

(6) Willfully causing or permitting any child to suffer, or inflicting on the child unjustifiable physical pain or injury that results in death under circumstances or conditions likely to produce great bodily harm or death, or, having the care or custody of any child, willfully causing or permitting that child to be injured or harmed under circumstances likely to produce great bodily harm or death, when that injury or harm results in death (Sec. 12022.95, Pen. C.).

(7) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding two million five hundred thousand dollars ($2,500,000) (subpara. (D), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(8) Execution of a scheme or artifice to defraud the Medi-Cal program or any other health care program administered by the State Department of Health Services or its agents or contractors, or to obtain under false or fraudulent pretenses, representations, or promises any property owned by or under the custody of the Medi-Cal program or any health care program administered by the department, its agents, or contractors under circumstances likely to cause or that do cause two or more persons great bodily injury (subd. (d), Sec. 14107, W.& I.C.).

(*l*) The provisions listed in this subdivision imposing a sentence enhancement of four, five, or six years' imprisonment in the state prison may be referenced as Schedule L.

(1) Personally inflicting great bodily injury on a child under the age of five years in the commission or attempted commission of a felony (subd. (d), Sec. 12022.7, Pen. C.).

(m) The provisions listed in this subdivision imposing a sentence enhancement of 4, 5, or 10 years' imprisonment in the state prison may be referenced as Schedule M.

(1) Commission or attempted commission of a felony while personally using a firearm with prior conviction of carjacking or attempted carjacking (para. (2), subd. (a), Sec. 12022.5, Pen. C.).

(n) The provisions listed in this subdivision imposing a sentence enhancement of five years' imprisonment in the state prison may be referenced as Schedule N.

(1) Commission of a serious felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (B), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Using sex offender registration information to commit a felony (para. (1), subd. (q), Sec. 290, and para. (1), subd. (b), Sec. 290.4, Pen. C.).

(3) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (2), subd. (b), Sec. 368, Pen. C.).

(4) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (3), subd. (b), Sec. 368, Pen. C.).

(5) Two prior felony convictions of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim with current conviction of the same (subd. (f), Sec. 550, Pen. C.).

(6) Prior conviction of a serious felony with current conviction of a serious felony (para. (1), subd. (a), Sec. 667, Pen. C.).

(7) Prior conviction of any specified sex offense with current conviction of lewd and lascivious acts with a child under 14 years of age (subd. (a), Sec. 667.51, Pen. C.).

(8) Prior conviction of any specified sex offense with current conviction of any of those sex offenses (subd. (a), Sec. 667.6, Pen. C.).

(9) Kidnapping or carrying away any child under 14 years of age with the intent to permanently deprive the parent or legal guardian custody of that child (Sec. 667.85, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony that causes the victim to become comatose due to a brain injury or to suffer paralysis of a permanent nature (subd. (b), Sec. 12022.7, Pen. C.).

(11) Personally inflicting great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony (subd. (c), Sec. 12022.7, Pen. C.).

(12) Inflicting great bodily injury on any victim in the commission or attempted commission of any specified sex offense (Sec. 12022.8, Pen. C.).

(13) Personally and intentionally inflicting injury upon a pregnant woman during the commission or attempted commission of a felony that results in the termination of the pregnancy when the defendant knew or reasonably should have known that the victim was pregnant (subd. (a), Sec. 12022.9, Pen. C.).

(14) Using information disclosed to the licensee of a community care facility by a prospective client regarding his or her status as a sex offender to commit a felony (subd. (c), Sec. 1522.01, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 4 kilograms or 100 liters (para. (2), subd. (a), and para. (2), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission of the crime causes any child under 16 years of age to suffer great bodily injury (subd. (b), Sec. 11379.7, H.& S.C.).

(17) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 10 gallons or three pounds (para. (2), subd. (a), Sec. 11379.8, H.& S.C.).

(18) Fleeing the scene of the crime after commission of vehicular manslaughter (subd. (c), Sec. 20001, Veh. C.).

(o) The provisions listed in this subdivision imposing a sentence enhancement of 5, 6, or 10 years' imprisonment in the state prison may be referenced as Schedule O.

(1) Discharging a firearm at an occupied motor vehicle in the commission or attempted commission of a felony which caused great bodily injury or death to another person (para. (1), subd. (b), Sec. 12022.5, Pen. C.).

(2) Commission or attempted commission of a felony while personally using an assault weapon or a machinegun (para. (2), subd. (b), Sec. 12022.5, Pen. C.).

(3) Discharging a firearm from a motor vehicle in the commission or attempted commission of a felony with the intent to inflict great bodily injury or death and causing great bodily injury or death (Sec. 12022.55, Pen. C.).

(p) The provisions listed in this subdivision imposing a sentence enhancement of seven years' imprisonment in the state prison may be referenced as Schedule P.

(1) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (3), subd. (b), Sec. 368, Pen. C.).

(q) The provisions listed in this subdivision imposing a sentence enhancement of nine years' imprisonment in the state prison may be referenced as Schedule Q.

(1) Kidnapping a victim for the purpose of committing any specified felony sex offense (subd. (a), Sec. 667.8, Pen. C.).

(r) The provisions listed in this subdivision imposing a sentence enhancement of 10 years' imprisonment in the state prison may be referenced as Schedule R.

(1) Commission of a violent felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (C), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Two or more prior prison terms for any specified sex offense with current conviction of any of those sex offenses (subd. (b), Sec. 667.6, Pen. C.).

(3) Commission or attempted commission of any specified felony offense while personally using a firearm (subd. (b), Sec. 12022.53, Pen. C.).

(4) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 10 kilograms or 200 liters (para. (3), subd. (a), and para. (3), subd. (b), Sec. 11370.4, H.& S.C.).

(5) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 25 gallons or 10 pounds (para. (3), subd. (a), Sec. 11379.8, H.& S.C.).

(s) The provisions listed in this subdivision imposing a sentence enhancement of 15 years' imprisonment in the state prison may be referenced as Schedule S.

(1) Kidnapping a victim under 14 years of age for the purpose of committing any specified felony sex offense (subd. (b), Sec. 667.8, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 20 kilograms or 400 liters (para. (4), subd. (a), and para. (4), subd. (b), Sec. 11370.4, H.& S.C.).

(3) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 105 gallons or 44 pounds (para. (4), subd. (a), Sec. 11379.8, H.& S.C.).

(t) The provisions listed in this subdivision imposing a sentence enhancement of 20 years' imprisonment in the state prison may be referenced as Schedule T.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense (subd. (c), Sec. 12022.53, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 40 kilograms (para. (5), subd. (a), Sec. 11370.4, H.& S.C.).

(u) The provisions listed in this subdivision imposing a sentence enhancement of 25 years' imprisonment in the state prison may be referenced as Schedule U.

(1) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 80 kilograms (para. (6), subd. (a), Sec. 11370.4, H.& S.C.).

(v) The provisions listed in this subdivision imposing a sentence enhancement of 25 years to life imprisonment in the state prison may be referenced as Schedule V.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense and proximately causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 12022.53, Pen. C.).

SEC. 3. Section 11108.3 of the Penal Code is amended to read:

11108.3. (a) In addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the Department of Justice the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the Attorney General in consultation with the Bureau of Alcohol, Tobacco, and Firearms all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a

crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the Attorney General pursuant to this section all information pertaining to any firearm taken into custody, except where the firearm has been voluntarily placed with the law enforcement agency for safekeeping.

(b) When the department receives information from a local law enforcement agency pursuant to subdivision (a), it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, and Firearms to the extent practicable.

(c) The Department of Justice shall implement an electronic system by January 1, 2002, to receive comprehensive tracing information from each local law enforcement agency, and to forward this information to the National Tracing Center.

(d) In implementing this section, the Attorney General shall ensure to the maximum extent practical that both of the following apply:

(1) The information he or she provides to the federal Bureau of Alcohol, Tobacco, and Firearms enables that agency to trace the ownership of the firearm described in subdivision (a).

(2) Local law enforcement agencies can report all relevant information without being unduly burdened by this reporting function.

(e) Information collected pursuant to this section shall be maintained by the department for a period of not less than 10 years, and shall be available, under guidelines set forth by the Attorney General, for academic and policy research purposes.

(f) The Attorney General shall have the authority to issue regulations to further the purposes of this section.

SEC. 4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest

arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender

or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the

use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the

hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person

committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing,

receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with

the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the

Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to

require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be

punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6,

when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner

is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief

is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment

and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or

elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense

listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions

Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the

provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.6. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one

thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense

being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall

include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order

issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.7. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section

12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other

person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 5. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) (1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the

defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(2) A firearm is not a nuisance pursuant to this subdivision if the firearm owner disposes of his or her firearm pursuant to paragraph (2) of subdivision (d) of Section 12021.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 6. Section 12201 of the Penal Code is amended to read:

12201. Nothing in this chapter shall affect or apply to any of the following:

(a) The sale to, purchase by, or possession of machineguns by police departments, sheriffs' offices, marshals' offices, district attorneys' offices, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties, provided, however, that any sale to these entities be transacted by a person who is permitted pursuant to Section 12230 and licensed pursuant to Section 12250.

(b) The possession of machineguns by regular, salaried, full-time peace officer members of a police department, sheriff's office, marshal's office, district attorney's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit when on duty and if the use is within the scope of their duties.

SEC. 6.5. It is the intent of the Legislature in amending Section 12280 of the Penal Code to delete the exemption allowing retired peace officers to obtain an assault weapon from their employing agency upon retirement. These amendments are intended to make Section 12280 of the Penal Code consistent with the holding in Silveira v. Lockyer (2003) 312. F.3d 1052 by the Ninth Circuit Court of Appeals, which held that exemption to be unconstitutional. The amendments deleting the exemption are therefore declaratory of existing law.

SEC. 7. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon,

except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since registered any other lawfully obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars ($500), but not less than three hundred fifty dollars ($350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the assault weapon shall be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars ($500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

(3) The person has not previously been convicted of violating this section.

(4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(5) The person relinquished the firearms pursuant to Section 12288.

(d) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f) (1) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies

specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a) and (b) shall not prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a sworn peace officer member of an agency specified in subdivision (e), provided that the peace officer is authorized by his or her employer to possess or receive the assault weapon. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002; in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon.

(g) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (f) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(j) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (f), if the assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(k) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon.

(C) The assault weapon is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor, which is lent by the same pursuant to paragraph (1).

(*l*) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (k).

(m) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(o) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(p) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivisions (a) and (b) shall not apply to the sale of assault weapons by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Federal military and law enforcement agencies.

(4) Law enforcement and military agencies of other states.

(5) Foreign governments and agencies approved by the United States State Department.

(6) Officers described in subdivision (f) who are authorized to possess assault weapons pursuant to subdivision (f).

(s) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 8. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days with the Department of Justice pursuant to those procedures that the department may establish. Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars ($20) per person 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 shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) (1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun

dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section or that was possessed pursuant to subdivision (f) of Section 12280 by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed gun dealer, as defined in subdivision (c) of Section 12290, in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290, is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.

(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 or 12276.1 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.

(g) Any person who registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2000, where the assault weapon is thereafter defined as an assault weapon pursuant to Section 12276.1, shall be deemed to have registered the weapon for purposes of this chapter and shall not be required to reregister the weapon pursuant to this section.

(h) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 9. Section 12287 of the Penal Code is amended to read:

12287. (a) The Department of Justice may, upon a finding of good cause, issue permits for the manufacture or sale of assault weapons for the sale to, purchase by, or possession of assault weapons by, any of the following:

(1) The agencies listed in subdivision (e), and the officers described in subdivision (f) of Section 12280.

(2) Entities and persons who have been issued permits pursuant to this section or Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal law enforcement and military agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

SEC. 10. Section 12290 of the Penal Code is amended to read:

12290. (a) Any licensed gun dealer, as defined in subdivision (c), who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) (1) Any licensed gun dealer, as defined in subdivision (c), may take possession of any assault weapon for the purposes of servicing or repair from any person to whom it is legally registered or who has been issued a permit to possess it pursuant to this chapter.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to paragraph (1), to a gunsmith for purposes of accomplishing service or repair of the same. Transfers are permissible only to the following persons:

(A) A gunsmith who is in the dealer's employ.

(B) A gunsmith with whom the dealer has contracted for gunsmithing services. In order for this subparagraph to apply, the gunsmith receiving the assault weapon must hold all of the following:

(i) A dealer's license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(ii) Any business license required by a state or local governmental entity.

(c) The term ''licensed gun dealer,'' as used in this article, means a person who is licensed pursuant to Section 12071, and who has a permit to sell assault weapons issued pursuant to Section 12287.

SEC. 11. Section 12301 of the Penal Code is amended to read:

12301. (a) The term ''destructive device,'' as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a ''destructive device'' found in subsection (b) of Section 179.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term ''antique cannon'' means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term ''antique rifle'' means a firearm conforming to the definition of an ''antique firearm'' in Section 179.11 of Title 27 of the Code of Federal Regulations.

(4) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(5) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(6) Any sealed device containing dry ice (CO_2) or other chemically reactive substances assembled for the purpose of causing an explosion by a chemical reaction.

(7) Any device designed or intended to emit or propel a burning stream of combustible or flammable liquid a distance of 10 feet or more.

(b) The term ''explosive,'' as used in this chapter, shall mean any explosive defined in Section 12000 of the Health and Safety Code.

SEC. 12. (a) Section 4.1 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 1290.

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 12021 of the Penal Code, (3) AB 319 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290, in which case Sections 4, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 226. 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 12021 of the Penal Code, (3) AB 319 and AB 1290 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 226, in which case Sections 4, 4.1, 4.3, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 319. 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 12021 of the Penal Code, (3) AB 1290 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 319, in which case Sections 4, 4.1, 4.2, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(d) Section 4.4 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290 and SB 226. 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 12021 of the Penal Code, (3) AB 319 is not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290 and SB 226, in which case Sections 4, 4.1, 4.2, 4.3, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(e) Section 4.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319 and SB 226. 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 12021 of the Penal Code, (3) AB 1290 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319 and SB 266, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.6, and 4.7 of this bill shall not become operative.

(f) Section 4.6 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319 and AB 1290. 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 12021 of the Penal Code, (3) SB 226 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319 and AB

1290, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.7 of this bill shall not become operative.

Section 4.7 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319, AB 1290, and SB 226. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) all four bills amend Section 12021 of the Penal Code, and (3) this bill is enacted after AB 319, AB 1290, and SB 226, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 500

An act to amend Sections 12126, 12130, and 12132 of the Penal Code, relating to firearms.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 12126 of the Penal Code is amended to read:

12126. As used in this chapter, "unsafe handgun'' means any pistol, revolver, or other firearm capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, for which any of the following is true:

(a) For a revolver:

(1) It does not have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(b) For a pistol:

(1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(4) Commencing January 1, 2006, for a center-fire semiautomatic pistol that is not already listed on the roster pursuant to Section 12131, it does not have either a chamber load indicator, or a magazine disconnect mechanism.

(5) Commencing January 1, 2007, for all center-fire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.

(6) Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have a magazine disconnect mechanism, if it has a detachable magazine.

(c) As used in this section, a ''chamber load indicator'' means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.

(d) As used in this section, a ''magazine disconnect mechanism'' means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

(e) As used in this section, a ''semiautomatic pistol'' means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

SEC. 2. Section 12130 of the Penal Code is amended to read:

12130. (a) Any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, shall be tested within a reasonable period of time by an independent laboratory certified pursuant to subdivision (b) to determine whether that pistol, revolver, or

other firearm capable of being concealed upon the person meets or exceeds the standards defined in Section 12126.

(b) On or before October 1, 2000, the Department of Justice shall certify laboratories to verify compliance with the standards defined in Section 12126. The department may charge any laboratory that is seeking certification to test any pistol, revolver, or other firearm capable of being concealed upon the person pursuant to this chapter a fee not exceeding the costs of certification.

(c) The certified testing laboratory shall, at the manufacturer's or importer's expense, test the firearm and submit a copy of the final test report directly to the Department of Justice along with a prototype of the weapon to be retained by the department. The department shall notify the manufacturer or importer of its receipt of the final test report and the department's determination as to whether the firearm tested may be sold in this state.

(d) (1) Commencing January 1, 2006, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a chamber load indicator as defined in subdivision (c) of Section 12126, or a magazine disconnect mechanism as defined in subdivision (d) of Section 12126 if it has a detachable magazine.

(2) Commencing January 1, 2007, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have both a chamber load indicator as defined in subdivision (c) of Section 12126 and a magazine disconnect mechanism as defined in subdivision (d) of Section 12126.

(3) Commencing January 1, 2006, no rimfire semiautomatic pistol may be submitted for testing pursuant to this chapter if it has a detachable magazine, and does not have a magazine disconnect mechanism as defined in subdivision (d) of Section 12126.

SEC. 3. Section 12132 of the Penal Code is amended to read:

12132. This chapter shall not apply to any of the following:

(a) The sale, loan, or transfer of any firearm pursuant to Section 12082 or 12084 in order to comply with subdivision (d) of Section 12072.

(b) The sale, loan, or transfer of any firearm that is exempt from the provisions of subdivision (d) of Section 12072 pursuant to any applicable exemption contained in Section 12078, if the sale, loan, or transfer complies with the requirements of that applicable exemption to subdivision (d) of Section 12072.

(c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 12125.

(d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Section 12071 for the purposes of the service or repair of that firearm.

(e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered in the circumstance set forth in subdivision (d).

(f) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered to that licensee for the purpose of a consignment sale or as collateral for a pawnbroker loan.

(g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 178.11 of the Code of Federal Regulations.

(h) (1) The Legislature finds a significant public purpose in exempting pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that are used for Olympic target shooting purposes at the time that the act adding this subdivision is enacted, and that fall within the definition of "unsafe handgun" pursuant to paragraph (3) of subdivision (b) of Section 12126 shall be exempt, as provided in paragraphs (2) and (3).

(2) This chapter shall not apply to any of the following pistols, because they are consistent with the significant public purpose expressed in paragraph (1):

MANUFACTURER	MODEL	CALIBER
ANSCHUTZ	FP	.22LR
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
DRULOV	FP	.22LR
GREEN	ELECTROARM	.22LR
HAMMERLI	100	.22LR
HAMMERLI	101	.22LR
HAMMERLI	102	.22LR
HAMMERLI	162	.22LR
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	FP10	.22LR
HAMMERLI	MP33	.22LR
HAMMERLI	SP20	.22LR

HAMMERLI	SP20	.32 S&W LONG
MORINI	CM102E	.22LR
MORINI	22M	.22LR
MORINI	32M	.32 S&W LONG
MORINI	CM80	.22LR
PARDINI	GP	.22 SHORT
PARDINI	GPO	.22 SHORT
PARDINI	GP–SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	K22	.22LR
PARDINI	MP	.32 S&W LONG
PARDINI	PGP75	.22LR
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
SAKO	FINMASTER	.22LR
STEYR	FP	.22LR
VOSTOK	IZH NO. 1	.22LR
VOSTOK	MU55	.22LR
VOSTOK	TOZ35	.22LR
WALTHER	FP	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP–2000	.22 SHORT

(3) The department shall create a program that is consistent with the purpose stated in paragraph (1) to exempt new models of competitive firearms from this chapter. The exempt competitive firearms may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

(i) The sale, loan, or transfer of any semiautomatic pistol that is to be used solely as a prop during the course of a motion picture, television, or video production by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 501

An act to amend Sections 65891.8 and 65891.12 of the Government Code, relating to housing.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 65891.8 of the Government Code is amended to read:

65891.8. (a) The goals of the IRP and the pilot project are to:

(1) Encourage economic investment, including job creation, near available housing.

(2) Encourage housing to be located near major employment centers.

(3) Encourage development along corridors served by transit and near transit stations.

(4) Encourage more sustainable and effective transportation between job and housing centers.

(b) The IRP shall contract with a qualified consultant to conduct an evaluation of the pilot project. Ongoing monitoring and evaluation shall be conducted throughout the implementation of phases one and two. After zones have been selected and projects begin on each of the zones, the progress of each project shall be evaluated. The evaluation shall assess the gap between jobs and housing by comparing the ratio between the number of jobs and the number of housing units in a local jurisdiction with a designated IRP Jobs-Housing Opportunity Zone, before an opportunity zone project has been approved and after it has been completed. The comparison shall be based on an optimum balance of jobs and housing being one and one-half jobs for one housing unit, as determined by the Department of Finance. The following data shall be used in determining that a jobs-housing balance has been mitigated in a jurisdiction:

(1) The number of building permits issued as provided by the California Industrial Research Bureau.

(2) The number of jobs generated, as determined by the Employment Development Department.

(c) An interim report shall be submitted by the IRP to the Department of Housing and Community Development on or before July 31, 2004. A final report shall be submitted by the IRP to the department on or before July 31, 2008.

SEC. 2. Section 65891.12 of the Government Code is amended to read:

65891.12. This article shall become inoperative on July 31, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 502

An act to amend Sections 12071, 12074, 12077, and 12082, of the Penal Code, relating to firearms.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 12071 of the Penal Code, as amended by Section 1 of Chapter 911 of the Statutes of 2002, is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit

issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or

a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or

other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and

along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange, red, or other readily identifiable dummy round into the magazine. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange, red, or other readily identifiable dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder and rotate the cylinder so that the round

is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) Any time when the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(20) (A) Firearms dealers may require any agent who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the department pursuant to paragraph (4) of subdivision (a). The agent or employee shall provide on the application, the name and California firearms dealer number of the firearms dealer with whom he or she is employed.

(B) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(C) If the local jurisdiction requires a background check of the agents or employees of the firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subparagraph (A).

(D) Nothing in this paragraph shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105 or prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility, provided however, that the local jurisdiction may not charge a fee for the additional criminal history check.

(E) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in clause (ii) of subparagraph (G) of this paragraph.

(F) Nothing in this paragraph shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents.

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

(i) An ''agent'' is an employee of the licensee.

(ii) ''Secured'' means a firearm that is made inoperable in one or more of the following ways:

(I) The firearm is inoperable because it is secured by a firearms safety device listed on the department's roster of approved firearms safety devices pursuant to subdivision (d) of Section 12088 of this chapter.

(II) The firearm is stored in a locked gun safe or long-gun safe which meets the standards for department-approved gun safes set forth in Section 12088.2.

(III) The firearm is stored in a distinct locked room or area in the building that is used to store firearms that can only be unlocked by a key, a combination, or similar means.

(IV) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of 5 inches or more measured in any direction, the window shall be covered with steel bars of at least $^1/_2$ inch diameter or metal grating of at least 9 gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than 6 inches wide measured in any direction.

(E) Any metal screens have spaces no larger than 3 inches wide measured in any direction.

(F) All steel bars shall be no further than 6 inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 2. Section 12071 of the Penal Code, as amended by Section 1.5 of Chapter 911 of the Statutes of 2002, is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A

PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING

CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange, red, or other readily identifiable dummy round into the magazine. If no readily identifiable dummy round is

available, an empty cartridge casing with an empty primer pocket may be used.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange, red, or other readily identifiable dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) Any time when the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(20) (A) Firearms dealers may require any agent who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the department pursuant to paragraph (4) of subdivision (a). The agent or employee shall provide on the application, the name and California firearms dealer number of the firearms dealer with whom he or she is employed.

(B) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(C) If the local jurisdiction requires a background check of the agents or employees of the firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subparagraph (A).

(D) Nothing in this paragraph shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105 or prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility, provided however, that the local jurisdiction may not charge a fee for the additional criminal history check.

(E) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in clause (ii) of subparagraph (G) of this paragraph.

(F) Nothing in this paragraph shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents.

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

(i) An ''agent'' is an employee of the licensee.

(ii) ''Secured'' means a firearm that is made inoperable in one or more of the following ways:

(I) The firearm is inoperable because it is secured by a firearms safety device listed on the department's roster of approved firearms safety devices pursuant to subdivision (d) of Section 12088 of this chapter.

(II) The firearm is stored in a locked gun safe or long-gun safe which meets the standards for department-approved gun safes set forth in Section 12088.2.

(III) The firearm is stored in a distinct locked room or area in the building that is used to store firearms that can only be unlocked by a key, a combination, or similar means.

(IV) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of 5 inches or more measured in any direction, the window shall be covered with steel bars of at least $^1/_2$ inch diameter or metal grating of at least 9 gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than 6 inches wide measured in any direction.

(E) Any metal screens have spaces no larger than 3 inches wide measured in any direction.

(F) All steel bars shall be no further than 6 inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) (1) Except as otherwise provided in this paragraph, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), and all persons who have submitted information pursuant to subdivision (a) of Section 12083. The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located.

(2) The department shall remove from the centralized list any person whose federal firearms license has expired or has been revoked.

(3) Information compiled from the list shall be made available, upon request, for the following purposes only:

(A) For law enforcement purposes.

(B) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United

States Code for determining the validity of the license for firearm shipments.

(C) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(4) Information provided pursuant to paragraph (3) shall be limited to information necessary to corroborate an individual's current license status as being one of the following:

(A) A person licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(B) A person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and who is not subject to the requirement that he or she be licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions

or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(i) (1) For every verification inquiry made pursuant to paragraph (1) of subdivision (f) of Section 12072, the department shall determine whether the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and, if applicable, is properly licensed pursuant to this section.

(2) If the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and if applicable, is properly licensed pursuant to this section, the department shall immediately provide a unique verification number to the inquiring party.

(3) If the intended recipient does not possess an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or if applicable, is not properly licensed pursuant to this section, the department shall do all of the following:

(A) Immediately notify the inquiring party of that fact.

(B) Within 24 hours, notify the chief law enforcement officer of the jurisdiction where the address on the federal firearms license about which the inquiry was made is located, and notify an appropriate employee of the federal Bureau of Alcohol, Tobacco and Firearms of the denied verification.

SEC. 3. Section 12074 of the Penal Code is amended to read:

12074. (a) The register shall be prepared by and obtained from the State Printer and shall be furnished by the State Printer only to dealers on application at a cost to be determined by the Department of General Services for each 100 leaves in quadruplicate, one original and three duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this article.

(b) Where the electronic transfer of applicant information is used, the Department of Justice shall develop the standards for all appropriate electronic equipment and telephone numbers to effect the transfer of information to the department.

SEC. 4. Section 12077 of the Penal Code is amended to read:

12077. (a) The Department of Justice shall prescribe the form of the register and the record of electronic transfer pursuant to Section 12074.

(b) (1) For handguns, information contained in the register or record of electronic transfer shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section

12078 and the agency name, dealer waiting period exemption pursuant to subdivision (n) of Section 12078, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, curio and relic waiting period exemption pursuant to subdivision (t) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, for transactions occurring prior to January 1, 2003, the purchaser's basic firearms safety certificate number issued pursuant to Sections 12805 and 12809, for transactions occurring on or after January 1, 2003, the purchaser's handgun safety certificate number issued pursuant to Article 8 (commencing with Section 12800), manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), any identification number or mark assigned to the firearm pursuant to Section 12092, caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), salesperson's certificate of eligibility number if he or she has obtained a certificate of eligibility, name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, any information required to determine whether or not paragraph (6) of subdivision (c) of Section 12072 applies, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(2) Effective January 1, 2003, the purchaser shall provide his or her right thumbprint on the register in a manner prescribed by the

department. No exception to this requirement shall be permitted except by regulations adopted by the department.

(3) The firearms dealer shall record on the register or record of electronic transfer the date that the handgun is delivered.

(c) (1) For firearms other than handguns, information contained in the register or record of electronic transfer shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, auction or event waiting period exemption pursuant to subdivision (g) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, curio and relic waiting period exemption pursuant to paragraph (1) of subdivision (t) of Section 12078, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), salesperson's certificate of eligibility number if he or she has obtained a certificate of eligibility, name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(2) Effective January 1, 2003, the purchaser shall provide his or her right thumbprint on the register in a manner prescribed by the department. No exception to this requirement shall be permitted except by regulations adopted by the department.

(3) The firearms dealer shall record on the register or record of electronic transfer the date that the firearm is delivered.

(d) Where the register is used, the following shall apply:

(1) Dealers shall use ink to complete each document.

(2) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(3) Each dealer shall be provided instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(4) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a ''transaction'' means a single sale, loan, or transfer of any number of firearms that are not handguns.

(e) The dealer or salesperson making a sale shall ensure that all required information has been obtained from the purchaser. The dealer and all salespersons shall be informed that incomplete information will delay sales.

(f) Effective January 1, 2003, the purchaser's name, date of birth, and driver's license or identification number shall be obtained electronically from the magnetic strip on the purchaser's driver's license or identification and shall not be supplied by any other means except as authorized by the department. This requirement shall not apply in either of the following cases:

(1) The purchaser's identification consists of a military identification card.

(2) Due to technical limitations, the magnetic stripe reader is unable to obtain the required information from the purchaser's identification. In those circumstances, the firearms dealer shall obtain a photocopy of the identification as proof of compliance.

(3) In the event that the dealer has reported to the department that the dealer's equipment has failed, information pursuant to this subdivision shall be obtained by an alternative method to be determined by the department.

(g) As used in this section, the following definitions shall control:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

SEC. 5. Section 12082 of the Penal Code is amended to read:

12082. (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Section 12071 in accordance with this section in order to comply with subdivision (d) of Section 12072. The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or

transferee or the person being loaned the firearm, if it is not prohibited, in accordance with subdivision (c) of Section 12072. If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 12071 and 12072, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of subdivision (a) of Section 12072. If the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in the manner provided by Sections 12028 and 12032. The purchaser or transferee or person being loaned the firearm may be required by the dealer to pay a fee not to exceed ten dollars ($10) per firearm, and no other fee may be charged by the dealer for a sale, loan, or transfer of a firearm conducted pursuant to this section, except for the applicable fee that the Department of Justice may charge pursuant to Section 12076. Nothing in these provisions shall prevent a dealer from charging a smaller fee. The fee that the department may charge is the fee that would be applicable pursuant to Section 12076, if the dealer was selling, transferring, or delivering a firearm to a purchaser or transferee or person being loaned a firearm, without any other parties being involved in the transaction.

(b) The Attorney General shall adopt regulations under this section to do all of the following:

(1) Allow the seller or transferor of the person loaning the firearm, and the purchaser or transferee or the person being loaned the firearm, to complete a sale, loan, or transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of those records.

(2) Where a personal handgun importer is selling or transferring a pistol, revolver, or other firearm capable of being concealed upon the person to comply with clause (ii) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, to allow a personal handgun importer's ownership of the pistol, revolver, or other firearm capable of being concealed upon the person being sold or transferred to be recorded in a manner that if the firearm is returned to that personal handgun importer because the sale or transfer cannot be completed, the Department of Justice will have sufficient information about that personal handgun importer so that a record of his or her ownership can

be maintained in the registry provided by subdivision (c) of Section 11106.

(3) Ensure that the register or record of electronic transfer shall state the name and address of the seller or transferor of the firearm or the person loaning the firearm and whether or not the person is a personal handgun importer in addition to any other information required by Section 12077.

(c) Notwithstanding any other provision of law, a dealer who does not sell, transfer, or keep an inventory of handguns is not required to process private party transfers of handguns.

(d) A violation of this section by a dealer is a misdemeanor.

SEC. 6. If both this bill and AB 161 are enacted and become effective on or before January 1, 2004, and AB 161 repeals Section 12071 of the Penal Code, as amended by Section 1 of Chapter 911 of the Statutes of 2002, and this bill is enacted after AB 161, Section 1 of this bill shall not become operative, and the repeal of Section 12071 of the Penal Code, as amended by Section 1 of Chapter 911 of the Statutes of 2002, proposed by AB 161 shall be given effect.

CHAPTER 503

An act to add Section 118.7 to the Streets and Highways Code, relating to the Department of Transportation.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 24, 2003.]

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

SECTION 1. Section 118.7 is added to the Streets and Highways Code, to read:

118.7. (a) The department may, upon terms, standards, and conditions approved by the commission and the California Coastal Commission, transfer environmental mitigation property located within the city limits of Huntington Beach to a public agency or to a nonprofit corporation that is qualified pursuant to Section 501(c)(3) of the Internal Revenue Code and is organized for, among other things, open-space or land conservation purposes.

(b) For the purposes of this section, ''environmental mitigation property,'' means property owned by the department that is required by state or federal law, or by permit conditions imposed by a state or federal agency, to be preserved or restored as natural habitat to offset the environmental impacts caused by the construction and operation of a

state highway improvement project. However, ''environmental mitigation property'' does not include property that is part of highway operating right of way. Environmental mitigation property shall be maintained as natural habitat in accordance with the permit conditions. ''Environmental mitigation property'' means property situated immediately east and adjacent to State Highway Route 1 located between Brookhurst Street and Newland Street with an approximate size of 7.1 acres.

(c) As a condition to the transfer of environmental mitigation property pursuant to subdivision (a), the department may enter into a cooperative agreement with the transferee to provide funding for the future maintenance of the property consistent with any permit conditions and mitigation requirements imposed by state or federal law or conditions imposed by a state or federal agency. In determining the amount of the funding provided, the department shall consider the costs of maintaining the property and shall offset from the amount of those costs any benefit or value received by the transferee as a result of the transfer.

The department shall provide the fiscal and transportation policy committees of the Legislature with at least 30 days prior written notice of the transfer and cooperative agreement, and the amount of any funding in accordance with the transfer and cooperative agreement, to facilitate the Legislature's review of the transfer.

Funding provided as part of a transfer agreement shall be limited to a single occurrence.

(d) (1) The public agency or nonprofit corporation to which the department transfers the environmental mitigation property shall assume the long-term responsibility for the future maintenance of the property.

(2) (A) If the public agency or nonprofit corporation fails to maintain the property in the manner required by law and in the manner described in subdivision (b), or if the nonprofit corporation ceases to exist, the property shall automatically revert to the department.

(B) If the property reverts back to the department pursuant to this paragraph, any remaining funds from the original transfer pursuant to subdivision (a) shall revert back to the department.

(C) Any costs, including legal costs, associated with reversion pursuant to this paragraph shall not accrue to the department.

(e) (1) All deeds conveying property in accordance with this section shall include a restriction limiting the use of the property solely for environmental mitigation purposes in accordance with the permit conditions specified in subdivision (b).

(2) All deeds conveying property in accordance with this section and deeds related to a transfer or assignment of property under this section

shall be filed with the county recorder's office in the county where the property is located.

(f) The public agency or nonprofit corporation to which the department transfers environmental mitigation property shall not do any of the following:

(1) Transfer or assign the property to another entity without approval from the department and compliance with this section.

(2) Transfer or use the property for any other purpose than required by permit conditions and mitigation requirements.

(3) Subdivide the property.

(4) Allow the property to be used to obtain development approval for other property or to provide mitigation for the development of other property.

CHAPTER 504

An act to amend Sections 18951, 18952, 18953, 18954, 18955, 18958, 18959, 18960, 18961, and 33333.6 of the Health and Safety Code, relating to buildings and housing.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 18951 of the Health and Safety Code is amended to read:

18951. It is the purpose of this part to provide alternative regulations and standards for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of qualified historical buildings or structures, as defined in Section 18955. These alternative standards and regulations are intended to facilitate the rehabilitation, restoration, or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for the safety of the building occupants.

SEC. 2. Section 18952 of the Health and Safety Code is amended to read:

18952. This part shall apply to all qualified historical buildings or structures as defined in Section 18955.

SEC. 3. Section 18953 of the Health and Safety Code is amended to read:

18953. It is the intent of this part to provide means for the preservation of the historical value of qualified historical buildings or structures and, concurrently, to provide reasonable safety from fire, seismic forces or other hazards for occupants of these buildings or structures, and to provide reasonable availability to and usability by, the disabled.

SEC. 4. Section 18954 of the Health and Safety Code is amended to read:

18954. Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, moving, or continued use of a qualified historical building or structure may be made if they conform to this part. The building department of every city or county or other local agency that has jurisdiction over the enforcement of code within its legal authority shall apply the alternative standards and regulations adopted pursuant to Section 18959.5 in permitting repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, safety, moving, or continued use of a qualified historical building or structure. A state agency shall apply the alternative regulations adopted pursuant to Section 18959.5 in permitting repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, safety, moving, or continued use of a qualified historical building or structure.

The application of any alternative standards for the provision of access to the disabled or exemption from access requirements shall be done on a case-by-case and item-by-item basis, and shall not be applied to an entire qualified historical building or structure without individual consideration of each item, and shall not be applied to related sites or areas except on an item-by-item basis.

SEC. 5. Section 18955 of the Health and Safety Code is amended to read:

18955. For the purposes of this part, a qualified historical building or structure is any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. This shall include historical buildings or structures on existing or future national, state or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest, and city or county registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks. This shall also include places, locations, or sites identified on these historical registers or official inventories and deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction.

SEC. 6. Section 18958 of the Health and Safety Code is amended to read:

18958. Except as provided in Section 18930, the following state agencies, in addition to the State Historical Building Safety Board, shall have the authority to adopt rules and regulations pursuant to the State Historical Building Code governing the rehabilitation, preservation, restoration, related reconstruction, safety, or relocation of qualified historical buildings and structures within their jurisdiction:

(a) The Division of the State Architect.

(b) The State Fire Marshal.

(c) The State Building Standards Commission, but only with respect to approval of building standards.

(d) The Department of Housing and Community Development.

(e) The Department of Transportation.

(f) Other state agencies that may be affected by this part.

SEC. 7. Section 18959 of the Health and Safety Code is amended to read:

18959. (a) Except as otherwise provided in Part 2.5 (commencing with Section 18901), all state agencies shall administer and enforce this part with respect to qualified historical buildings or structures under their respective jurisdiction.

(b) Except as otherwise provided in Part 2.5 (commencing with Section 18901), all local authorities shall, within their legal authority, administer and enforce this part with respect to qualified historical buildings or structures under their respective jurisdictions where applicable.

(c) The State Historical Building Safety Board shall coordinate and consult with the other applicable state agencies affected by this part and, except as provided in Section 18943, disseminate provisions adopted pursuant to this part to all local building authorities and state agencies at cost.

(d) Regulations adopted by the State Fire Marshal pursuant to this part shall be enforced in the same manner as regulations are enforced under Sections 13145, 13146, and 13146.5.

(e) Regular and alternative building standards published in the California Building Standards Code shall be enforced in the same manner by the same governmental entities as provided by law.

(f) When administering and enforcing this part, each local agency may make changes or modifications in the requirements contained in the California Historical Building Code, as described in Section 18944.7, as it determines are reasonably necessary because of local climatic, geological, seismic, and topographical conditions. The local agency shall make an express finding that the modifications or changes are needed, and the finding shall be available as a public record. A copy of

the finding and change or modification shall be filed with the State Historical Building Safety Board. No modification or change shall become effective or operative for any purpose until the finding and modification or change has been filed with the board.

SEC. 8. Section 18960 of the Health and Safety Code is amended to read:

18960. (a) A State Historical Building Safety Board is hereby established as a unit within the Division of the State Architect. The board shall be composed of qualified experts in their respective fields who shall represent various state and local public agencies, professional design societies and building and preservation oriented organizations.

(b) This board shall act as a consultant to the State Architect and to the other applicable state agencies for purposes of this part. The board shall recommend to the State Architect and the other applicable state agencies rules and regulations for adoption pursuant to this part.

(c) The board shall also act as a review body to state and local agencies with respect to interpretations of this part as well as on matters of administration and enforcement of it. The board's decisions shall be reported in printed form.

(1) Notwithstanding subdivision (b) of Section 18945, if any local agency administering and enforcing this part or any person adversely affected by any regulation, rule, omission, interpretation, decision, or practice of this agency representing a building standard wishes to appeal the issue for resolution to the State Historical Building Safety Board, these parties may appeal to the board. The board may accept the appeal only if it determines that issues involved in the appeal have statewide significance.

(2) The State Historical Building Safety Board shall, upon making a decision on an appeal pursuant to paragraph (1), send a copy to the State Building Standards Commission.

(3) Requests for interpretation by local agencies of the provisions of this part may be accepted for review by the State Historical Building Safety Board. A copy of an interpretation decision shall be sent to the State Building Standards Commission in the same manner as paragraph (2).

(4) The State Historical Building Safety Board may charge a reasonable fee, not to exceed the cost of the service, for requests for copies of their decisions and for requests for reviews by the board pursuant to paragraph (1) or (3). All funds collected pursuant to this paragraph shall be deposited in the State Historical Building Code Fund, which is hereby established, for use by the State Historical Building Safety Board. The State Historical Building Code Fund and the fees collected therefor, and the budget of the State Historical Building Safety Board, shall be subject to annual appropriation in the Budget Act.

(5) Local agencies may also charge reasonable fees not to exceed the cost for making an appeal pursuant to paragraph (1) to persons adversely affected as described in that appeal.

(6) All other appeals involving building standards under this part shall be made as set forth in subdivision (a) of Section 18945.

(d) The board shall be composed of representatives of state agencies and public and professional building design, construction, and preservation organizations experienced in dealing with historic buildings. Unless otherwise indicated, each named organization shall appoint its own representatives. Each of the following shall have one member on the board who shall serve without pay, but shall receive actual and necessary expenses incurred while serving on the board:

(1) The Division of the State Architect.

(2) The State Fire Marshal.

(3) The State Historical Resources Commission.

(4) The California Occupational Safety and Health Standards Board.

(5) California Council, American Institute of Architects.

(6) Structural Engineers Association of California.

(7) A mechanical engineer, Consulting Engineers and Land Surveyors of California.

(8) An electrical engineer, Consulting Engineers and Land Surveyors of California.

(9) California Council of Landscape Architects.

(10) The Department of Housing and Community Development.

(11) The Department of Parks and Recreation.

(12) The California State Association of Counties.

(13) League of California Cities.

(14) The Office of Statewide Health Planning and Development.

(15) The Department of Rehabilitation.

(16) The California Chapter of the American Planning Association.

(17) The Department of Transportation.

(18) The California Preservation Foundation.

(19) The Seismic Safety Commission.

(20) The California Building Officials.

The 20 members listed above shall select a building contractor as a member of the board. The members shall serve without pay, but shall receive actual and necessary expenses incurred while serving on the board.

Each of the appointing authorities shall appoint, in the same manner as for members, an alternate in addition to a member. The alternate member shall serve in place of the member at the meetings of the board that the member is unable to attend. The alternate shall have all of the authority that the member would have when the alternate is attending in the place of the member. The board may appoint, from time to time, as

it deems necessary, consultants who shall serve without pay but shall receive actual and necessary expenses as approved by the board.

(e) The term of membership on the board shall be for four years, with the State Architect's representative serving continually until replaced. Vacancies on the board shall be filled in the same manner as original appointments. The board shall annually select a chairperson from among the members of the board.

SEC. 9. Section 18961 of the Health and Safety Code is amended to read:

18961. All state agencies that enforce and administer approvals, variances, or appeals procedures or decisions affecting the preservation or safety of the historical aspects of qualified historical buildings or structures shall use the alternative provisions of this part and shall consult with the State Historical Building Safety Board to obtain its review prior to undertaking action or making decisions on variances or appeals that affect qualified historical buildings or structures.

SEC. 10. 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.

(3) (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 shall not prevent an agency from incurring debt to be paid from the agency's Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's affordable housing obligations, as defined in paragraph (1) of subdivision (a) of Section 33333.8.

(B) A redevelopment plan may be amended by a legislative body to provide that there shall be no time limit on the establishment of loans, advances, and indebtedness paid from the agency's Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's affordable housing obligations, as defined in paragraph (1) of subdivision (a) of Section 33333.8. In adopting such an ordinance, neither the legislative body nor the agency is required to comply with Section 33345.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans, and the agency shall not 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. 11. Section 10 of this act shall become operative only if SB 1045 of the 2003–04 Regular Session of the Legislature is chaptered on or before January 1, 2004.

CHAPTER 505

An act to amend Section 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. (a) For free market forces to have a role in shaping the privacy practices of California businesses and for ''opt-in'' and ''opt-out'' remedies to be effective, Californians must be more than vaguely informed that a business might share personal information with third parties. Consumers must, for these reasons and pursuant to Section 1 of Article 1 of the California Constitution, be better informed about what kinds of personal information are purchased by businesses for direct marketing purposes. With these specifics, consumers can knowledgeably choose to opt-in or opt-out or choose among businesses that disclose information to third parties for direct marketing purposes on the basis of how protective the business is of consumers' privacy.

(b) Nothing in this act is intended to impose, and this act may not be construed to impose, any prohibition or requirement upon, restraint of, or prerequisite to, a business disclosing or exchanging personal information to third parties, including affiliated parties, for any lawful

purpose, including direct marketing purposes. This act, generally, and Section 1798.83 of the Civil Code, specifically, provides merely for descriptions of general business practices regarding direct marketing to be disclosed to customers after those practices have occurred and, for example, does not require that personal information associated with specific individuals be disclosed.

SEC. 2. Section 1798.83 of the Civil Code is repealed.

SEC. 3. Section 1798.83 is added to the Civil Code, to read:

1798.83. (a) Except as otherwise provided in subdivision (d), if a business has an established business relationship with a customer and has within the immediately preceding calendar year disclosed personal information that corresponds to any of the categories of personal information set forth in paragraph (6) of subdivision (e) to third parties, and if the business knows or reasonably should know that the third parties used the personal information for the third parties' direct marketing purposes, that business shall, after the receipt of a written or electronic mail request, or, if the business chooses to receive requests by toll-free telephone or facsimile numbers, a telephone or facsimile request from the customer, provide all of the following information to the customer free of charge:

(1) In writing or by electronic mail, a list of the categories set forth in paragraph (6) of subdivision (e) that correspond to the personal information disclosed by the business to third parties for the third parties' direct marketing purposes during the immediately preceding calendar year.

(2) In writing or by electronic mail, the names and addresses of all of the third parties that received personal information from the business for the third parties' direct marketing purposes during the preceding calendar year and, if the nature of the third parties' business cannot reasonably be determined from the third parties' name, examples of the products or services marketed, if known to the business, sufficient to give the customer a reasonable indication of the nature of the third parties' business.

(b) (1) A business required to comply with this section shall designate a mailing address, electronic mail address, or, if the business chooses to receive requests by telephone or facsimile, a toll-free telephone or facsimile number, to which customers may deliver requests pursuant to subdivision (a). A business required to comply with this section shall, at its election, do at least one of the following:

(A) Notify all agents and managers who directly supervise employees who regularly have contact with customers of the designated addresses or numbers or the means to obtain those addresses or numbers and instruct those employees that customers who inquire about the business' privacy practices or the business' compliance with this section shall be

informed of the designated addresses or numbers or the means to obtain the addresses or numbers.

(B) Add to the home page of its Web site, a link either to a page titled ''Your Privacy Rights'' or to add the words ''Your Privacy Rights,'' to the home page's link to the business' privacy policy. If the business elects to add the words ''Your Privacy Rights'' to the link to the business' privacy policy, the words ''Your Privacy Rights'' shall be in the same style and size of the link to the business' privacy policy. If the business does not display a link to its privacy policy on the home page of its Web site, or does not have a privacy policy, the words ''Your Privacy Rights'' shall be written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language. The first page of the link shall describe a customer's rights pursuant to this section and shall provide the designated mailing address, e-mail address, as required, or toll-free telephone number or facsimile number, as appropriate. If the business elects to add the words ''Your California Privacy Rights'' to the home page's link to the business's privacy policy in a manner that complies with this subdivision, and the first page of the link describes a customer's rights pursuant to this section, and provides the designated mailing address, electronic mailing address, as required, or toll-free telephone or facsimile number, as appropriate, the business need not respond to requests that are not received at one of the designated addresses or numbers.

(C) Make the designated addresses or numbers, or means to obtain the designated addresses or numbers, readily available upon request of a customer at every place of business in California where the business or its agents regularly have contact with customers.

The response to a request pursuant to this section received at one of the designated addresses or numbers shall be provided within 30 days. Requests received by the business at other than one of the designated addresses or numbers shall be provided within a reasonable period, in light of the circumstances related to how the request was received, but not to exceed 150 days from the date received.

(2) A business that is required to comply with this section and Section 6803 of Title 15 of the United States Code may comply with this section by providing the customer the disclosure required by Section 6803 of Title 15 of the United States Code, but only if the disclosure also complies with this section.

(3) A business that is required to comply with this section is not obligated to provide information associated with specific individuals and may provide the information required by this section in standardized format.

(c) (1) A business that is required to comply with this section is not obligated to do so in response to a request from a customer more than once during the course of any calendar year. A business with fewer than 20 full-time or part-time employees is exempt from the requirements of this section.

(2) If a business that is required to comply with this section adopts and discloses to the public, in its privacy policy, a policy of not disclosing personal information of customers to third parties for the third parties' direct marketing purposes unless the customer first affirmatively agrees to that disclosure, or of not disclosing the personal information of customers to third parties for the third parties' direct marketing purposes if the customer has exercised an option that prevents that information from being disclosed to third parties for those purposes, as long as the business maintains and discloses the policies, the business may comply with subdivision (a) by notifying the customer of his or her right to prevent disclosure of personal information, and providing the customer with a cost free means to exercise that right.

(d) The following are among the disclosures not deemed to be disclosures of personal information by a business for a third parties' direct marketing purposes for purposes of this section:

(1) Disclosures between a business and a third party pursuant to contracts or arrangements pertaining to any of the following:

(A) The processing, storage, management, or organization of personal information, or the performance of services on behalf of the business during which personal information is disclosed, if the third party that processes, stores, manages, or organizes the personal information does not use the information for a third party's direct marketing purposes and does not disclose the information to additional third parties for their direct marketing purposes.

(B) Marketing products or services to customers with whom the business has an established business relationship where, as a part of the marketing, the business does not disclose personal information to third parties for the third parties' direct marketing purposes.

(C) Maintaining or servicing accounts, including credit accounts and disclosures pertaining to the denial of applications for credit or the status of applications for credit and processing bills or insurance claims for payment.

(D) Public record information relating to the right, title, or interest in real property or information relating to property characteristics, as defined in Section 408.3 of the Revenue and Taxation Code, obtained from a governmental agency or entity or from a multiple listing service, as defined in Section 1087, and not provided directly by the customer to a business in the course of an established business relationship.

(E) Jointly offering a product or service pursuant to a written agreement with the third party that receives the personal information, provided that all of the following requirements are met:

(i) The product or service offered is a product or service of, and is provided by, at least one of the businesses that is a party to the written agreement.

(ii) The product or service is jointly offered, endorsed, or sponsored by, and clearly and conspicuously identifies for the customer, the businesses that disclose and receive the disclosed personal information.

(iii) The written agreement provides that the third party that receives the 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 product or service that is the subject of the written agreement.

(2) Disclosures to or from a consumer reporting agency of a customer's payment history or other information pertaining to transactions or experiences between the business and a customer if that information is to be reported in, or used to generate, a consumer report as defined in subdivision (d) of Section 1681a of Title 15 of the United States Code, and use of that information is limited by the federal Fair Credit Reporting Act.

(3) Disclosures of personal information by a business to a third party financial institution solely for the purpose of the business obtaining payment for a transaction in which the customer paid the business for goods or services with a check, credit card, charge card, or debit card, if the customer seeks the information required by subdivision (a) from the business obtaining payment, whether or not the business obtaining payment knows or reasonably should know that the third party financial institution has used the personal information for its direct marketing purposes.

(4) Disclosures of personal information between a licensed agent and its principal, if the personal information disclosed is necessary to complete, effectuate, administer, or enforce transactions between the principal and the agent, whether or not the licensed agent or principal also uses the personal information for direct marketing purposes, if that personal information is used by each of them solely to market products and services directly to customers with whom both have established business relationships as a result of the principal and agent relationship.

(5) Disclosures of personal information between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or co-branded card program with the financial institution, if the personal information disclosed is necessary for the financial institution to maintain or service accounts on behalf of the business with which it has a private label credit card, affinity card, retail

installment contract, or branded card program, or to complete, effectuate, administer, or enforce customer transactions or transactions between the institution and the business, whether or not the institution or the business also uses the personal information for direct marketing purposes, if that personal information is used solely to market products and services directly to customers with whom both the business and the financial institution have established business relationships as a result of the private label credit card, affinity card, retail installment contract, or co-branded card program.

(e) For purposes of this section:

(1) ''Customer'' means an individual who is a resident of California who provides personal information to a business during the creation of, or throughout the duration of, an established business relationship if the business relationship is primarily for personal, family, or household purposes.

(2) ''Direct marketing purposes'' means the use of personal information to solicit or induce a purchase, rental, lease, or exchange of products, goods, property, or services directly to individuals by means of the mail, telephone, or electronic mail for their personal, family, or household purposes. The sale, rental, exchange, or lease of personal information for consideration to businesses is a direct marketing purpose of the business that sells, rents, exchanges or obtains consideration for the personal information. ''Direct marketing purposes'' does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions, (B) to raise funds from and communicate with individuals regarding politics and government, (C) by a third party when the third party receives personal information solely as a consequence of having obtained for consideration permanent ownership of accounts that might contain personal information, or (D) by a third party when the third party receives personal information solely as a consequence of a single transaction where, as a part of the transaction, personal information had to be disclosed in order to effectuate the transaction.

(3) ''Disclose'' means to disclose, release, transfer, disseminate, or otherwise communicate orally, in writing, or by electronic or any other means to any third party.

(4) ''Employees who regularly have contact with customers'' means employees whose contact with customers is not incidental to their primary employment duties, and whose duties do not predominantly involve ensuring the safety or health of the businesses customers. It includes, but is not limited to, employees whose primary employment duties are as cashier, clerk, customer service, sales, or promotion. It does not, by way of example, include employees whose primary employment duties consist of food or beverage preparation or service, maintenance

and repair of the business' facilities or equipment, direct involvement in the operation of a motor vehicle, aircraft, watercraft, amusement ride, heavy machinery or similar equipment, security, or participation in a theatrical, literary, musical, artistic, or athletic performance or contest.

(5) ''Established business relationship'' means a relationship formed by a voluntary, two-way communication between a business and a customer, with or without an exchange of consideration, for the purpose of purchasing, renting, or leasing real or personal property, or any interest therein, or obtaining a product or service from the business, if the relationship is ongoing and has not been expressly terminated by the business or the customer, or if the relationship is not ongoing, but is solely established by the purchase, rental, or lease of real or personal property from a business, or the purchase of a product or service, no more than 18 months have elapsed from the date of the purchase, rental, or lease.

(6) (A) The categories of personal information required to be disclosed pursuant to paragraph (1) of subdivision (a) are all of the following:

(i) Name and address.
(ii) Electronic mail address.
(iii) Age or date of birth.
(iv) Names of children.
(v) Electronic mail or other addresses of children.
(vi) Number of children.
(vii) The age or gender of children.
(viii) Height.
(ix) Weight.
(x) Race.
(xi) Religion.
(xii) Occupation.
(xiii) Telephone number.
(xiv) Education.
(xv) Political party affiliation.
(xvi) Medical condition.
(xvii) Drugs, therapies, or medical products or equipment used.
(xviii) The kind of product the customer purchased, leased, or rented.
(xix) Real property purchased, leased, or rented.
(xx) The kind of service provided.
(xxi) Social security number.
(xxii) Bank account number.
(xxiii) Credit card number.
(xxiv) Debit card number.
(xxv) Bank or investment account, debit card, or credit card balance.
(xxvi) Payment history.

(xxvii) Information pertaining to the customer's creditworthiness, assets, income, or liabilities.

(B) If a list, description, or grouping of customer names or addresses is derived using any of these categories, and is disclosed to a third party for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate any other personal information from which the list was derived, and that personal information when it was disclosed identified, described, or was associated with an individual, the categories set forth in this subdivision that correspond to the personal information used to derive the list, description, or grouping shall be considered personal information for purposes of this section.

(7) ''Personal information'' as used in this section means any information that when it was disclosed identified, described, or was able to be associated with an individual and includes all of the following:

(A) An individual's name and address.
(B) Electronic mail address.
(C) Age or date of birth.
(D) Names of children.
(E) Electronic mail or other addresses of children.
(F) Number of children.
(G) The age or gender of children.
(H) Height.
(I) Weight.
(J) Race.
(K) Religion.
(L) Occupation.
(M) Telephone number.
(N) Education.
(O) Political party affiliation.
(P) Medical condition.
(Q) Drugs, therapies, or medical products or equipment used.
(R) The kind of product the customer purchased, leased, or rented.
(S) Real property purchased, leased, or rented.
(T) The kind of service provided.
(U) Social security number.
(V) Bank account number.
(W) Credit card number.
(X) Debit card number.
(Y) Bank or investment account, debit card, or credit card balance.
(Z) Payment history.
(AA) Information pertaining to creditworthiness, assets, income, or liabilities.

(8) ''Third party'' or ''third parties'' means one or more of the following:

(A) A business that is a separate legal entity from the business that has an established business relationship with a customer.

(B) A business that has access to a database that is shared among businesses, if the business is authorized to use the database for direct marketing purposes, unless the use of the database is exempt from being considered a disclosure for direct marketing purposes pursuant to subdivision (d).

(C) A business not affiliated by a common ownership or common corporate control with the business required to comply with subdivision (a).

(f) (1) Disclosures of personal information for direct marketing purposes between affiliated third parties that share the same brand name are exempt from the requirements of paragraph (1) of subdivision (a) unless the personal information disclosed corresponds to one of the following categories, in which case the customer shall be informed of those categories listed in this subdivision that correspond to the categories of personal information disclosed for direct marketing purposes and the third party recipients of personal information disclosed for direct marketing purposes pursuant to paragraph (2) of subdivision (a):

(A) Number of children.
(B) The age or gender of children.
(C) Electronic mail or other addresses of children.
(D) Height.
(E) Weight.
(F) Race.
(G) Religion.
(H) Telephone number.
(I) Medical condition.
(J) Drugs, therapies, or medical products or equipment used.
(K) Social security number.
(L) Bank account number.
(M) Credit card number.
(N) Debit card number.
(O) Bank or investment account, debit card, or credit card balance.

(2) If a list, description, or grouping of customer names or addresses is derived using any of these categories, and is disclosed to a third party or third parties sharing the same brand name for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate the personal information from which the list was derived, and that personal information when it was disclosed identified, described, or was associated with an individual, any other personal information that corresponds to the categories set forth in this

subdivision used to derive the list, description, or grouping shall be considered personal information for purposes of this section.

(3) If a business discloses personal information for direct marketing purposes to affiliated third parties that share the same brand name, the business that discloses personal information for direct marketing purposes between affiliated third parties that share the same brand name may comply with the requirements of paragraph (2) of subdivision (a) by providing the overall number of affiliated companies that share the same brand name.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) This section does not apply to a financial institution that is subject to the California Financial Information Privacy Act (Division 1.2 (commencing with Section 4050) of the Financial Code) if the financial institution is in compliance with Sections 4052, 4025, 4053, 4053.5 and 4054.6 of the Financial Code, as those sections read when they were chaptered on August 28, 2003, and as subsequently amended by the Legislature or by initiative.

(i) This section shall become operative on January 1, 2005.

SEC. 4. Section 1798.84 of the Civil Code is amended to read:

1798.84. (a) Any waiver of a provision of this title is contrary to public policy and is void and unenforceable.

(b) Any customer injured by a violation of this title may institute a civil action to recover damages.

(c) In addition, for a willful, intentional, or reckless violation of Section 1798.83, a customer may recover a civil penalty not to exceed three thousand dollars ($3,000) per violation; otherwise, the customer may recover a civil penalty of up to five hundred dollars ($500) per violation for a violation of Section 1798.83.

(d) Unless the violation is willful, intentional, or reckless, a business that is alleged to have not provided all the information required by subdivision (a) of Section 1798.83, to have provided inaccurate information, failed to provide any of the information required by subdivision (a) of Section 1798.83, or failed to provide information in the time period required by subdivision (b) of Section 1798.83, may assert as a complete defense in any action in law or equity that it thereafter provided regarding the information that was alleged to be untimely, all the information, or accurate information, to all customers who were provided incomplete or inaccurate information, respectively, within 90 days of the date the business knew that it had failed to provide the information, timely information, all the information, or the accurate information, respectively.

(e) Any business that violates, proposes to violate, or has violated this title may be enjoined.

(f) A prevailing plaintiff in any action commenced under Section 1798.83 shall also be entitled to recover his or her reasonable attorney's fees and costs.

(g) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

CHAPTER 506

An act to add and repeal Sections 125118, 125118.5, 125119, 125119.3, and 125119.5 of the Health and Safety Code, relating to medical research.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 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) Isolation of human embryonic stem cells represents a major step forward in human biology and has generated much interest among scientists and the public, particularly among patients and their advocates regarding the benefits of human embryonic stem cells and stem cell research.

(2) Because human embryonic stem cells can give rise to many different types of cells, such as muscle cells, nerve cells, heart cells, and others, they are enormously important to science and hold great promise for advances in health care.

(3) Research using human embryonic stem cells may help scientists generate cells and tissue that could be used for transplantation and may someday be used as replacement cells and tissue to treat many chronic diseases and conditions, including Parkinson's disease, spinal injury, stroke, burns, heart disease, diabetes, arthritis, and liver disease.

(4) Research involving human embryonic stem cells may also improve understanding of the complex events that occur during normal human development and what causes diseases and conditions including birth defects, pediatric brain injury, and cancer, and may improve the way new drugs are developed and tested for safety and efficacy.

(5) In view of the scientific and medical benefits that may result from research using human embryonic stem cells, it is essential that this

research be supported and encouraged. However, in view of the ethical, legal, and social issues relevant to human embryonic stem cell research, it is essential that this research be subject to oversight that complements and goes beyond the oversight of human subject research provided by the Office for Human Research Protections within the United States Department of Health and Human Services.

(6) The National Institutes of Health currently has no comprehensive guidelines concerning the ethical, legal, and social issues involved with the derivation and use of human embryonic stem cells in medical research.

(b) Therefore, it is the intent of the Legislature that the State Department of Health Services develop guidelines for human embryonic stem cell research in California in order to ensure that this research is guided by ethical and legal standards.

SEC. 2. Section 125118 is added to the Health and Safety Code, to read:

125118. (a) On or before January 1, 2005, the department shall develop guidelines for research involving the derivation or use of human embryonic stem cells in California.

(b) In developing the guidelines specified in subdivision (a), the department may consider other applicable guidelines developed or in use in the United States and in other countries, including, but not limited to, the Guidelines for Research Using Human Pluripotent Stem Cells developed by the National Institutes of Health and published in August 2000, and corrected in November 2000.

(c) The department may contract with a public or private organization, to the extent permitted by state law, for assistance in developing the guidelines.

(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 125118.5 is added to the Health and Safety Code, to read:

125118.5. (a) For purposes of developing the guidelines required by Section 125118, the director shall establish a Human Stem Cell Research Advisory Committee.

(b) The advisory committee shall consist of 13 members, as follows:

(1) Seven scientists with experience in biomedical research in the fields of cell differentiation, nuclear reprogramming, tissue formation and regeneration, stem cell biology, developmental biology, regenerative medicine, or related fields.

(2) Two medical ethicists.

(3) Two persons with backgrounds in legal issues related to human embryonic stem cell research, in vitro fertilization, or family law, as it applies to the donation of embryos and oocytes.

(4) Two persons who are members or leaders of religious organizations.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 4. Section 125119 is added to the Health and Safety Code, to read:

125119. (a) (1) All research projects involving the derivation or use of human embryonic stem cells shall be reviewed and approved by an institutional review board that is established in accordance with federal regulations, including Part 46 (commencing with Section 46.101) of Subchapter A of Subtitle A of Title 45 of the Code of Federal Regulations, prior to being undertaken. Any such institutional review board shall, in its review of human embryonic stem cell research projects, consider and apply the guidelines developed by the department pursuant to Section 125118. An institutional review board may require modifications to the plan or design of a proposed human embryonic stem cell research project as a condition of approving the research project.

(2) For purposes of this article, ''IRB'' means an institutional review board described in paragraph (1).

(b) Not less than once per year, an IRB shall conduct continuing review of human embryonic stem cell research projects reviewed and approved under this section in order to ensure that the research continues to meet the standards for IRB approval. Pursuant to its review in accordance with this subdivision, an IRB may revoke its prior approval of research under this section and require modifications to the plan or design of a continuing research project before permitting the research to continue.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. Section 125119.3 is added to the Health and Safety Code, to read:

125119.3. (a) Each IRB that has reviewed human embryonic stem cell research pursuant to Section 125119 shall report to the department, annually, on the number of human embryonic stem cell research projects that the IRB has reviewed, and the status and disposition of each of those projects.

(b) Each IRB shall also report to the department regarding unanticipated problems, unforeseen issues, or serious continuing investigator noncompliance with the requirements or determinations of

the IRB with respect to the review of human embryonic stem cell research projects, and the actions taken by the IRB to respond to these situations.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6. Section 125119.5 is added to the Health and Safety Code, to read:

125119.5. (a) The department shall at least annually review reports from IRBs pursuant to Section 125120, and may revise the guidelines developed pursuant to Section 125118, as it deems necessary.

(b) The department shall report annually to the Legislature on human embryonic stem cell research activity. These annual reports shall be compiled from the reports from IRBs pursuant to Section 125120.

(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 507

An act to amend and renumber Sections 125115, 125116, and 125117 of, to add Section 125305 to, to add the headings of Part 5.5 (commencing with Section 125300) and Chapter 1 (commencing with Section 125300) to Division 106 of, and to repeal the heading of Article 5 (commencing with Section 125115) of Chapter 1 of Part 5 of Division 106 of, the Health and Safety Code, relating to human tissue.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. The heading of Article 5 (commencing with Section 125115) of Chapter 1 of Part 5 of Division 106 of the Health and Safety Code is repealed.

SEC. 2. Section 125115 of the Health and Safety Code is amended and renumbered to read:

125300. The policy of the State of California shall be as follows:

(a) That research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells from any source, including somatic cell nuclear transplantation, shall be permitted and that full consideration of the ethical and medical implications of this research be given.

(b) That research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells, including somatic cell nuclear transplantation, shall be reviewed by an approved institutional review board.

SEC. 3. Section 125116 of the Health and Safety Code is amended and renumbered to read:

125315. (a) A physician and surgeon or other health care provider delivering fertility treatment shall provide his or her patient with timely, relevant, and appropriate information to allow the individual to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the fertility treatment. The failure to provide to a patient this information constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(b) Any individual to whom information is provided pursuant to subdivision (a) shall be presented with the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research. When providing fertility treatment, a physician and surgeon or other health care provider shall provide a form to the male and female partner, or the individual without a partner, as applicable, that sets forth advanced written directives regarding the disposition of embryos. This form shall indicate the time limit on storage of the embryos at the clinic or storage facility and shall provide, at a minimum, the following choices for disposition of the embryos based on the following circumstances:

(1) In the event of the death of either the male or female partner, the embryos shall be disposed of by one of the following actions:

(A) Made available to the living partner.

(B) Donation for research purposes.

(C) Thawed with no further action taken.

(D) Donation to another couple or individual.

(E) Other disposition that is clearly stated.

(2) In the event of the death of both partners or the death of a patient without a partner, the embryos shall be disposed of by one of the following actions:

(A) Donation for research purposes.

(B) Thawed with no further action taken.

(C) Donation to another couple or individual.

(D) Other disposition that is clearly stated.

(3) In the event of separation or divorce of the partners, the embryos shall be disposed of by one of the following actions:

(A) Made available to the female partner.

(B) Made available to the male partner.

(C) Donation for research purposes.

(D) Thawed with no further action taken.
(E) Donation to another couple or individual.
(F) Other disposition that is clearly stated.

(4) In the event of the partners' decision or a patient's decision who is without a partner, to abandon the embryos by request or a failure to pay storage fees, the embryos shall be disposed of by one of the following actions:

(A) Donation for research purposes.
(B) Thawed with no further action taken.
(C) Donation to another couple or individual.
(D) Other disposition that is clearly stated.

(c) A physician and surgeon or other health care provider delivering fertility treatment shall obtain written consent from any individual who elects to donate embryos remaining after fertility treatments for research. For any individual considering donating the embryos for research, to obtain informed consent, the health care provider shall convey all of the following to the individual:

(1) A statement that the early human embryos will be used to derive human pluripotent stem cells for research and that the cells may be used, at some future time, for human transplantation research.

(2) A statement that all identifiers associated with the embryos will be removed prior to the derivation of human pluripotent stem cells.

(3) A statement that donors will not receive any information about subsequent testing on the embryo or the derived human pluripotent cells.

(4) A statement that derived cells or cell lines, with all identifiers removed, may be kept for many years.

(5) Disclosure of the possibility that the donated material may have commercial potential, and a statement that the donor will not receive financial or any other benefits from any future commercial development.

(6) A statement that the human pluripotent stem cell research is not intended to provide direct medical benefit to the donor.

(7) A statement that early human embryos donated will not be transferred to a woman's uterus, will not survive the human pluripotent stem cell derivation process, and will be handled respectfully, as is appropriate for all human tissue used in research.

SEC. 4. Section 125117 of the Health and Safety Code is amended and renumbered to read:

125320. (a) A person may not knowingly, for valuable consideration, purchase or sell embryonic or cadaveric fetal tissue for research purposes pursuant to this chapter.

(b) For purposes of this section, ''valuable consideration'' does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation of a part.

(c) Embryonic or cadaveric fetal tissue may be donated for research purposes pursuant to this chapter.

SEC. 5. A heading is added as Part 5.5 (commencing with Section 125300) of Division 106 of the Health and Safety Code, to read:

PART 5.5. USE OF HUMAN CELLS

SEC. 6. A heading is added as Chapter 1 (commencing with Section 125300) of Part 5.5 of Division 106 of the Health and Safety Code, to read:

CHAPTER 1. EMBRYO REGISTRY

SEC. 7. Section 125305 is added to the Health and Safety Code, to read:

125305. (a) The department shall establish and maintain an anonymous registry of embryos that are available for research. The purpose of this registry is to provide researchers with access to embryos that are available for research purposes.

(b) The department may contract with the University of California, private organizations, or public entities to establish and administer the registry.

(c) This section shall be implemented only to the extent that funds for the purpose of establishing and administering the registry are received by the department from private or other nonstate sources.

CHAPTER 508

An act to amend Section 132352.6 of, and to add Article 6.5 (commencing with Section 132360) to Chapter 3 of Division 12.7 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. (a) The Legislature finds and declares that it is critical that the people of San Diego County be aware of the structure of governance that oversees implementation of regional issues and that at a future date, to be determined, that the people concur, through a public vote on the future structure and responsibilities of the agency. The Legislature also finds that the function of the consolidated agency is to

plan and construct a transportation system with an understanding and consideration of the community as a whole.

(b) To maintain the quality of life that all San Diegans deserve, the consolidated agency should fully appreciate all of the following:

(1) Transportation is only one of the many aspects of a region's quality of life. In order to create a successful mobility system, land use must be considered. Our water and air quality are also directly connected to our transportation, urban infrastructure, and natural resources.

(2) There is no single plan or agency that considers, comprehensively or financially, all quality of life issues.

(3) Several agencies currently have purview over the varied aspects of our quality of life.

(4) Compatibility and thoroughness of these various agencies' plans and financing mechanisms are key to implementing mobility improvements in San Diego. This should be the goal of a regional comprehensive plan.

(5) It is further the goal that the consolidated agency in allocating transportation funding consider the extent to which each jurisdiction's general plan implements land use policies recommended in the regional comprehensive plan.

(6) The public is directly affected by the actions of the consolidated agency and must have adequate opportunities to participate in the consolidated agency's decisions affecting the future of our regional quality of life.

(7) To ensure that the vision and goals of the regional comprehensive plan are implemented, the consolidated agency must monitor its progress through realistic measurable standards and criteria, which must be included in the regional comprehensive plan itself and made available to the public.

(8) It is critical that the public be informed in a timely manner on the regional decisionmaking process within their own jurisdictions and have access to the records of decisions, in compliance with the California Public Records Act.

SEC. 2. Section 132352.6 of the Public Utilities Code is amended to read:

132352.6. (a) The consolidated agency shall submit a report to the Governor and Legislature by December 31 of even-numbered years beginning in 2004, regarding progress in carrying out the provisions of this act.

(b) On December 31, 2005, the Legislative Analyst's Office (LAO) shall submit a report to the Governor and the Legislature which shall evaluate and make recommendations on the consolidated agency in the following areas:

(1) The effectiveness of the current governance structure within the region, including, but not limited to, public participation, accountability, proportional representation and to examine various alternative governance structures.

(2) The effectiveness in addressing the transportation needs of the region, including coordination and efficiencies in transportation planning and implementation as a result of the consolidation.

(3) The effectiveness of addressing quality of life indicators, including, but not limited to, land use patterns, a viable and sustainable economy, affordable public transportation, affordable housing, transportation mobility options, air and water quality, and open space and natural habitat preservation, including, but not limited to, the agency created by the act, and the county board of supervisors.

(4) The adequacy of the scope and authority for regional decisionmaking.

(c) The consolidated agency shall pay for the costs of the study which shall be capped at an amount not to exceed one hundred fifty thousand dollars ($150,000).

(d) (1) After the Legislative Analyst's report has been submitted to the Governor and the Legislature as required by subdivision (b), if legislation is enacted that makes a change in the governance structure or the scope of the authority and responsibility of the consolidated agency, the change shall be submitted for approval at a regularly scheduled election to the voters residing within the jurisdiction of the consolidated agency prior to the implementation of those changes.

(2) To provide opportunity for full regional public participation in any change made according to paragraph (1), the consolidated agency should convene regional working groups and take other steps that will allow for the greatest level of regionwide input from all segments of San Diego County and all interested groups and organizations.

(3) This subdivision shall apply to legislation that specifically references this subdivision and shall remain in effect until the election required pursuant to paragraph (1) has occurred. After the election has occurred, this subdivision shall become inoperative.

SEC. 3. Article 6.5 (commencing with Section 132360) is added to Chapter 3 of Division 12.7 of the Public Utilities Code, to read:

Article 6.5. Adoption and Administration of a Regional Comprehensive Plan

132360. (a) It is the intent of the Legislature that the consolidated agency complete a public process by June 30, 2004, to prepare and adopt a regional comprehensive plan based on the local general and regional plans that integrates land uses, transportation systems, infrastructure

needs, and public investment strategies, within a regional framework, in cooperation with member agencies and the public.

(b) The regional comprehensive plan should be updated as necessary for the consolidated agency to comply with Section 132360.2.

132360.1. If the consolidated agency prepares a regional comprehensive plan, it is the intent of the Legislature that:

(a) The regional comprehensive plan preserve and improve the quality of life in the San Diego region, maximize mobility and transportation choices, and conserve and protect natural resources.

(b) In formulating and maintaining the regional comprehensive plan, the consolidated agency shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the county and cities within the region, and the plans and planning activities of organizations that affect or are concerned with planning and development within the region.

(c) The consolidated agency shall engage in a public collaborative planning process. The recommendations resulting from the public collaborative planning process shall be made available to and considered by the consolidated agency for integration into the draft regional comprehensive plan. The consolidated agency shall adopt a procedure to carry out this process including a method of addressing and responding to recommendations from the public.

(d) In formulating and maintaining the regional comprehensive plan, the consolidated agency shall seek the cooperation and consider the recommendations of all of the following:

(1) Its member agencies and other agencies of local government within the jurisdiction of the consolidated agency.

(2) State and federal agencies.

(3) Educational institutions.

(4) Research organizations, whether public or private.

(5) Civic groups.

(6) Private individuals.

(7) Governmental jurisdictions located outside the region but contiguous to its boundaries.

(e) The consolidated agency shall make the regional comprehensive plan, policies, and objectives available to all local agencies and facilitate consideration of the regional comprehensive plan in the development, implementation, and update of local general plans. The consolidated agency shall provide assistance and enhance the opportunities for local agencies to develop, implement, and update general plans in a manner that recognizes, at a minimum, land use, transportation compatibility, and a jobs-to-housing balance within the regional comprehensive plan.

(f) The consolidated agency shall maintain the data, maps, and other information developed in the course of formulating the regional

comprehensive plan in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other government agencies and private organizations.

(g) The components of the regional comprehensive plan may include, but are not limited to, transportation, housing, water quality, infrastructure, and open space, including habitat. At some future date, components such as water supply, air quality, solid waste, economy, and energy should be part of the regional comprehensive plan. Performance standards and measurable criteria shall be established through a public process to ensure that the regional comprehensive plan is prepared consistent with these measures as well as in determining achievement of the regional comprehensive plan goals throughout its implementation.

(h) Any water supply component or provision of the regional infrastructure strategy regarding water supply contained in the regional comprehensive plan shall be consistent with the urban water management plan and other adopted regional water facilities and supply plans of the San Diego County Water Authority.

132360.2. The regional transportation plan and the regional comprehensive plan should be compatible. The regional comprehensive plan should set the framework for the type of changes upon which subsequent regional transportation plans should focus.

132360.3. The consolidated agency shall maintain the data, maps, and other information developed in the course of formulating the regional comprehensive plan in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other government agencies and private organizations.

132360.4. Each member agency should review the actions that the consolidated agency makes on state and federally regulated or mandated items and report these actions to their respective jurisdiction for review.

132360.5. All documents created in compliance with this article shall be made available and ready for public review in compliance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

CHAPTER 509

An act to amend Section 37670 of the Education Code, relating to school programs.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 37670 of the Education Code is amended to read:

37670. (a) Notwithstanding any other provision of law, a school district may operate a program of multitrack year-round scheduling at one or more schools within the district. A program of multitrack year-round scheduling may operate at a schoolsite for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution at a regularly scheduled board meeting certifying that both of the following criteria are met at the schoolsite:

(1) The number of annual instructional minutes is not less than that of schools of the same grade levels utilizing the traditional school calendar.

(2) It is not possible for the school to maintain a multitrack schedule containing the same number of instructional days as are provided in schools of the district utilizing the traditional school calendar given the facilities, program, class sizes, and projected number of pupils enrolled at the schoolsite.

(b) All certificated employees under this program, except those serving under an administrative or supervisorial credential and who are assigned full time to a school in positions requiring qualifications for certification, shall work the same number of days and shall increase the number of minutes worked daily on a uniform basis.

(c) A program conducted pursuant to this section shall be eligible for apportionment from the State School Fund.

(d) By July 1, 2008, the department shall, in consultation with the Office of Public School Construction, conduct a survey to determine whether school districts operating a program of multitrack year-round scheduling for as few as 163 days in a fiscal year will phase out this scheduling program by the 2009–10 fiscal year and shall submit a copy of the results of this survey to the Assembly Committee on Education, the Senate Committee on Education, and the Department of Finance. Based on this survey, the Legislature shall determine whether to repeal or continue the authority to operate a program of multitrack year-round scheduling for as few as 163 days in a fiscal year.

CHAPTER 510

An act to amend Section 853 of, and to add Article 10.5 (commencing with Section 2198) to Chapter 5 of Division 2 of, the Business and Professions Code, relating to the healing arts.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

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

(a) According to the 2000 United States Census, from July 1990 to July 1999, inclusive, California's population increased by approximately 4 million people. Approximately 61 percent of this growth can be attributed to the growth in the Latino population.

(b) Title VI of the Civil Rights Act of 1964 requires any federally funded health facility to ensure persons with limited English proficiency may meaningfully access health care services. Persons with limited English proficiency are often excluded from programs, experience delays or denial of services, or receive care and services based on inaccurate or incomplete information.

(c) The Association of American Medical Colleges in 1998 found only 6.8 percent of all graduates from the United States medical schools were of an ethnic or racial minority group.

(d) According to the Institute of Medicine report requested by the United States Congress, research evidence suggests that provider-patient communication is directly linked to patient satisfaction and subsequent healthy outcomes for patients. Thus, when sociocultural differences between the patient and the provider are not appreciated, explored, understood, or communicated in the medical encounter, the result is patient dissatisfaction, poor adherence, poor outcomes, and racial and ethnic disparities in health care.

(e) The Summit on Immigration Needs and Contributions of the Bridging Borders in the Silicon Valley Project found that approximately 50 percent of participants reported that having a provider that speaks his or her language will improve the quality of health care services they receive.

SEC. 2. Section 853 of the Business and Professions Code is amended to read:

853. (a) The Licensed Physicians and Dentists from Mexico Pilot Program is hereby created. This program shall allow up to 30 licensed physicians specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology, and up to 30 licensed dentists from Mexico to practice medicine or dentistry in California for a period not to exceed three years. The program shall also maintain an alternate list of program participants.

(b) The Medical Board of California shall issue three-year nonrenewable licenses to practice medicine to licensed Mexican

physicians and the Dental Board of California shall issue three-year nonrenewable permits to practice dentistry to licensed Mexican dentists.

(c) Physicians from Mexico eligible to participate in this program shall comply with the following:

(1) Be licensed, certified or recertified, and in good standing in their medical specialty in Mexico. This certification or recertification shall be performed, as appropriate, by the Consejo Mexicano de Ginocologia y Obstetricia, A.C., the Consejo Mexicano de Certificacion en Medicina Familiar, A.C., the Consejo Mexicano de Medicina Interna, A.C., or the Consejo Mexicano de Certificacion en Pediatria, A.C.

(2) Prior to leaving Mexico, each physician shall have completed the following requirements:

(A) Passed the board review course with a score equivalent to that registered by United States applicants when passing a board review course for the United States certification examination in each of his or her specialty areas and passed an interview examination developed by the National Autonomous University of Mexico (UNAM) for each specialty area. Family practitioners who shall include obstetrics and gynecology in their practice, shall also be required to have appropriately documented, as specified by United States standards, 50 live births. Mexican obstetricians and gynecologists shall be fellows in good standing of the American College of Obstetricians and Gynecologists.

(B) (i) Satisfactorily completed a six-month orientation program that addressed medical protocol, community clinic history and operations, medical administration, hospital operations and protocol, medical ethics, the California medical delivery system, health maintenance organizations and managed care practices, and pharmacology differences. This orientation program shall be approved by the Medical Board of California to ensure that it contains the requisite subject matter and meets appropriate California law and medical standards where applicable.

(ii) Additionally, Mexican physicians participating in the program shall be required to be enrolled in adult English as a Second Language (ESL) classes that focus on both verbal and written subject matter. Each physician participating in the program shall have transcripts sent to the Medical Board of California from the appropriate Mexican university showing enrollment and satisfactory completion of these classes.

(C) Representatives from the National Autonomous University of Mexico (UNAM) in Mexico and a medical school in good standing or a facility conducting an approved medical residency training program in California shall confer to develop a mutually agreed upon distant learning program for the six-month orientation program required pursuant to subparagraph (B).

(3) Upon satisfactory completion of the requirements in paragraphs (1) and (2), and after having received their three-year nonrenewable medical license, the Mexican physicians shall be required to obtain continuing education pursuant to Section 2190 of the Business and Professions Code. Each physician shall obtain an average of 25 continuing education units per year for a total of 75 units for a full three years of program participation.

(4) Upon satisfactory completion of the requirements in paragraphs (1) and (2), the applicant shall receive a three-year nonrenewable license to work in nonprofit community health centers and shall also be required to participate in a six-month externship at his or her place of employment. This externship shall be undertaken after the participant has received a license and is able to practice medicine. The externship shall ensure that the participant is complying with the established standards for quality assurance of nonprofit community health centers and medical practices. The externship shall be affiliated with a medical school in good standing in California. Complaints against program participants shall follow the same procedures contained in the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(5) After arriving in California, Mexican physicians participating in the program shall be required to be enrolled in adult English as a Second Language (ESL) classes at institutions approved by the Bureau of Private Post Secondary and Vocational Education or accredited by the Western Association of Schools and Colleges. These classes shall focus on verbal and written subject matter to assist a physician in obtaining a level of proficiency in English that is commensurate with the level of English spoken at community clinics where he or she will practice. The community clinic employing a physician shall submit documentation confirming approval of an ESL program to the Medical Board of California for verification. Transcripts of satisfactory completion of the ESL classes shall be submitted to the Medical Board of California as proof of compliance with this provision.

(6) (A) Nonprofit community health centers employing Mexican physicians in the program shall be required to have medical quality assurance protocols and either be accredited by the Joint Commission on Accreditation of Health Care Organizations or have protocols similar to those required by the Joint Commission on Accreditation of Health Care Organizations. These protocols shall be submitted to the Medical Board of California prior to the hiring of Mexican physicians.

(B) In addition, after the program participant successfully completes the six-month externship program, a free standing health care organization that has authority to provide medical quality certification, including, but not limited to, health plans, hospitals, and the Integrated Physician Association, shall be responsible for ensuring and overseeing

the compliance of nonprofit community health centers medical quality assurance protocols, conducting site visits when necessary, and developing any additional protocols, surveys, or assessment tools to ensure that quality of care standards through quality assurance protocols are being appropriately followed by physicians participating in the program.

(7) Participating hospitals shall have the authority to establish criteria necessary to allow individuals participating in this three-year pilot program to be granted hospital privileges in their facilities.

(8) The Medical Board of California shall provide oversight review of both the implementation of this program and the evaluation required pursuant to subdivision (j). The Board shall consult with the medical schools applying for funding to implement and evaluate this program, executive and medical directors of nonprofit community health centers wanting to employ program participants, and hospital administrators who will have these participants practicing in their hospital, as it conducts its oversight responsibilities of this program and evaluation. Any funding necessary for the implementation of this program, including the evaluation and oversight functions, shall be secured from nonprofit philanthropic entities. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The Medical Board of California shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities. The board shall, upon appropriation in the annual Budget Act, expend funds received from nonprofit philanthropic entities for this program.

(d) (1) Dentists from Mexico eligible to participate in this program shall comply with the following requirements or the requirements contained in paragraph (2):

(A) Be graduates from the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia).

(B) Meet all criteria required for licensure in Mexico that is required and being applied by the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia), including, but not limited to:

(i) A minimum grade point average.

(ii) A specified English language comprehension and conversational level.

(iii) Passage of a general examination.

(iv) Passage of an oral interview.

(C) Enroll and complete an orientation program that focuses on the following:

(i) Practical issues in pharmacology that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(ii) Practical issues and diagnosis in oral pathology that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iii) Clinical applications that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iv) Biomedical sciences that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(v) Clinical history management that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vi) Special patient care that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vii) Sedation techniques that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(viii) Infection control guidelines which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(ix) Introduction to health care systems in California.

(x) Introduction to community clinic operations.

(2) (A) Graduate within the three-year period prior to enrollment in the program, from a foreign dental school that has received provisional approval or certification by November of 2003 from the Dental Board of California under the Foreign Dental School Approval Program.

(B) Enroll and satisfactorily complete an orientation program that focuses on the health care system and community clinic operations in California.

(C) Enroll and satisfactorily complete a course taught by an approved foreign dental school on the infection control guidelines adopted by the Dental Board of California.

(3) Upon satisfactory completion to a competency level of the requirements in paragraph (1) or (2), dentists participating in the program shall be eligible to obtain employment in a nonprofit community health center pursuant to subdivision (f) within the structure of an extramural dental program for a period not to exceed three years.

(4) Dentists participating in the program shall be required to complete the necessary continuing education units required by the Dental Practice Act (Chapter 4 (commencing with Section 1600)).

(5) The program shall accept 30 participating dentists. The program shall also maintain an alternate list of program applicants. If an active program participant leaves the program for any reason, a participating dentist from the alternate list shall be chosen to fill the vacancy. Only active program participants shall be required to complete the orientation program specified in subparagraph (C) of paragraph (1).

(6) (A) Additionally, an extramural dental facility may be identified, qualified, and approved by the board as an adjunct to, and an extension of, the clinical and laboratory departments of an approved dental school.

(B) As used in this subdivision, ''extramural dental facility'' includes, but is not limited to, any clinical facility linked to an approved dental school for the purposes of monitoring or overseeing the work of a dentist licensed in Mexico participating in this program and that is employed by an approved dental school for instruction in dentistry that exists outside or beyond the walls, boundaries, or precincts of the primary campus of the approved dental school, and in which dental services are rendered. These facilities shall include nonprofit community health centers.

(C) Dental services provided to the public in these facilities shall constitute a part of the dental education program.

(D) Approved dental schools shall register extramural dental facilities with the board. This registration shall be accompanied by information supplied by the dental school pertaining to faculty supervision, scope of treatment to be rendered, arrangements for postoperative care, the name and location of the facility, the date operations shall commence at the facility, and a description of the equipment and facilities available. This information shall be supplemented with a copy of the agreement between the approved dental school and the affiliated institution establishing the contractual relationship. Any change in the information initially provided to the board shall be communicated to the board.

(7) The program shall also include issues dealing with program operations, and shall be developed in consultation by representatives of community clinics, approved dental schools, and the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia).

(8) The Dental Board of California shall provide oversight review of the implementation of this program and the evaluation required pursuant to subdivision (j). The Dental Board shall consult with dental schools in California that have applied for funding to implement and evaluate this program and executive and dental directors of nonprofit community

health centers wanting to employ program participants, as it conducts its oversight responsibilities of this program and evaluation. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The Dental Board of California shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities.

(e) Nonprofit community health centers that employ participants shall be responsible for ensuring that participants are enrolled in local English-language instruction programs and that the participants attain English-language fluency at a level that would allow the participants to serve the English-speaking patient population when necessary and have the literacy level to communicate with appropriate hospital staff when necessary.

(f) Physicians and dentists from Mexico having met the applicable requirements set forth in subdivisions (c) and (d) shall be placed in a pool of candidates who are eligible to be recruited for employment by nonprofit community health centers in California, including, but not limited to, those located in the Counties of Ventura, Los Angeles, San Bernardino, Imperial, Monterey, San Benito, Sacramento, San Joaquin, Santa Cruz, Yuba, Orange, Colusa, Glenn, Sutter, Kern, Tulare, Fresno, Stanislaus, San Luis Obispo, and San Diego. The Medical Board of California shall ensure that all Mexican physicians participating in this program have satisfactorily met the requirements set forth in subdivision (c) prior to placement at a nonprofit community health center.

(g) Nonprofit community health centers in the counties listed in subdivision (f) shall apply to the Medical Board of California and the Dental Board of California to hire eligible applicants who shall then be required to complete a six-month externship that includes working in the nonprofit community health center and a corresponding hospital. Once enrolled in this externship, and upon payment of the required fees, the Medical Board of California shall issue a three-year nonrenewable license to practice medicine and the Dental Board of California shall issue a three-year nonrenewable dental special permit to practice dentistry. For purposes of this program, the fee for a three-year nonrenewable license to practice medicine shall be nine hundred dollars ($900) and the fee for a three-year nonrenewable dental permit shall be five hundred forty-eight dollars ($548). A licensee or permitholder shall practice only in the nonprofit community health center that offered him or her employment and the corresponding hospital. This three-year nonrenewable license or permit shall be deemed to be a license or permit in good standing pursuant to the provisions of this chapter for the

purpose of participation and reimbursement in all federal, state, and local health programs, including managed care organizations and health maintenance organizations.

(h) The three-year nonrenewable license or permit shall terminate upon notice by certified mail, return receipt requested, to the licensee's or permitholder's address of record, if, in the Medical Board of California or Dental Board of California's sole discretion, it has determined that either:

(1) The license or permit was issued by mistake.

(2) A complaint has been received by either board against the licensee or permitholder that warrants terminating the license or permit pending an investigation and resolution of the complaint.

(i) All applicable employment benefits, salary, and policies provided by nonprofit community health centers to their current employees shall be provided to medical and dental practitioners from Mexico participating in this pilot program. This shall include nonprofit community health centers providing malpractice insurance coverage.

(j) Beginning 12 months after this pilot program has commenced, an evaluation of the program shall be undertaken with funds provided from philanthropic foundations. The evaluation shall be conducted jointly by one medical school and one dental school in California and the National Autonomous University of Mexico in consultation with the Medical Board of California and the Dental Board of California. If the evaluation required pursuant to this section does not begin within 15 months after the pilot project has commenced, the evaluation may be performed by an independent consultant selected by the Director of the Department of Consumer Affairs. This evaluation shall include, but not be limited to, the following issues and concerns:

(1) Quality of care provided by doctors and dentists licensed under this pilot program.

(2) Adaptability of these licensed practitioners to California medical and dental standards.

(3) Impact on working and administrative environment in nonprofit community health centers and impact on interpersonal relations with medical licensed counterparts in health centers.

(4) Response and approval by patients.

(5) Impact on cultural and linguistic services.

(6) Increases in medical encounters provided by participating practitioners to limited English-speaking patient populations and increases in the number of limited English-speaking patients seeking health care services from nonprofit community health centers.

(7) Recommendations on whether the program should be continued, expanded, altered, or terminated.

(8) Progress reports on available data listed shall be provided to the Legislature on achievable time intervals beginning the second year of implementation of this pilot program. An interim final report shall be issued three months before termination of this pilot program. A final report shall be submitted to the Legislature at the time of termination of this pilot program on all of the above data. The final report shall reflect and include how other initiatives concerning the development of culturally and linguistically competent medical and dental providers within California and the United States are impacting communities in need of these health care providers.

(k) Costs for administering this pilot program shall be secured from philanthropic entities.

(*l*) Program applicants shall be responsible for working with the governments of Mexico and the United States in order to obtain the necessary three-year visa required for program participation.

SEC. 3. Article 10.5 (commencing with Section 2198) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 10.5. Cultural and Linguistic Competency of Physicians Act of 2003

2198. (a) This article shall be known and may be cited as the Cultural and Linguistic Competency of Physicians Act of 2003. The cultural and linguistic physician competency program is hereby established and shall be operated by local medical societies of the California Medical Association and shall be monitored by the Division of Licensing.

(b) This program shall be a voluntary program for all interested physicians. As a primary objective, the program shall consist of educational classes which shall be designed to teach physicians the following:

(1) A foreign language at the level of proficiency that initially improves their ability to communicate with non-English speaking patients.

(2) A foreign language at the level of proficiency that eventually enables direct communication with the non-English speaking patients.

(3) Cultural beliefs and practices that may impact patient health care practices and allow physicians to incorporate this knowledge in the diagnosis and treatment of patients who are not from the predominate culture in California.

(c) The program shall operate through local medical societies and shall be developed to address the ethnic language minority groups of interest to local medical societies.

(d) In dealing with Spanish language and cultural practices of Mexican immigrant communities, the cultural and linguistic training program shall be developed with direct input from physician groups in Mexico who serve the same immigrant population in Mexico. A similar approach may be used for any of the languages and cultures that are taught by the program or appropriate ethnic medical societies may be consulted for the development of these programs.

(e) Training programs shall be based and developed on the established knowledge of providers already serving target populations and shall be formulated in collaboration with the California Medical Association, the Division of Licensing, and other California-based ethnic medical societies.

(f) Programs shall include standards that identify the degree of competency for participants who successfully complete independent parts of the course of instruction.

(g) Programs shall seek accreditation by the Accreditation Council for Continuing Medical Education.

(h) The Division of Licensing shall convene a workgroup including, but not limited to, representatives of affected patient populations, medical societies engaged in program delivery, and community clinics to perform the following functions:

(1) Evaluation of the progress made in the achievement of the intent of this article.

(2) Determination of the means by which achievement of the intent of this article can be enhanced.

(3) Evaluation of the reasonableness and the consistency of the standards developed by those entities delivering the program.

(4) Determination and recommendation of the credit to be given to participants who successfully complete the identified programs. Factors to be considered in this determination shall include, at a minimum, compliance with requirements for continuing medical education and eligibility for increased rates of reimbursement under Medi-Cal, the Healthy Families Program, and health maintenance organization contracts.

(i) Funding shall be provided by fees charged to physicians who elect to take these educational classes and any other funds that local medical societies may secure for this purpose.

(j) A survey for language minority patients shall be developed and distributed by local medical societies, to measure the degree of satisfaction with physicians who have taken the educational classes on cultural and linguistic competency provided under this section. Local medical societies shall also develop an evaluation survey for physicians to assess the quality of educational or training programs on cultural and

linguistic competency. This information shall be shared with the workgroup established by the Division of Licensing.

2198.1. For purposes of this article, ''cultural and linguistic competency'' means cultural and linguistic abilities that can be incorporated into therapeutic and medical evaluation and treatment, including, but not limited to, the following:

(a) Direct communication in the patient-client primary language.

(b) Understanding and applying the roles that culture, ethnicity, and race play in diagnosis, treatment, and clinical care.

(c) Awareness of how the health care providers and patients attitudes, values, and beliefs influence and impact professional and patient relations.

CHAPTER 511

An act to amend Sections 21455.5, 21455.6, and 21455.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 21455.5 of the Vehicle Code is amended to read:

21455.5. (a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

(2) If it locates the system at an intersection, and ensures that the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system. As

used in this subdivision, ''operate'' includes all of the following activities:

(1) Developing uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines.

(2) Performing administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for selection of location.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).

(E) Overseeing the establishment or change of signal phases and the timing thereof.

(F) Maintaining controls necessary to assure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.

(d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) may not be contracted out to the manufacturer or supplier of the automated enforcement system.

(e) (1) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies and only for the purposes of this article.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and may not be used for any other purpose.

(3) Except for court records described in Section 68152 of the Government Code, the confidential records and information described in paragraphs (1) and (2) may be retained for up to six months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information.

(f) Notwithstanding subdivision (d), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(g) (1) A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.

(2) Paragraph (1) does not apply to a contract that was entered into by a governmental agency and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

SEC. 2. Section 21455.6 of the Vehicle Code is amended to read:

21455.6. (a) A city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system authorized under Section 21455.5 prior to authorizing the city or county to enter into a contract for the use of the system.

(b) (1) The activities listed in subdivision (c) of Section 21455.5 that relate to the operation of an automated enforcement system may be contracted out by the city or county, except that the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), or (F) of paragraph (2) of, subdivision (c) of Section 21455.5 may not be contracted out to the manufacturer or supplier of the automated enforcement system.

(2) Paragraph (1) does not apply to a contract that was entered into by a city or county and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

(c) The authorization in Section 21455.5 to use automated enforcement systems does not authorize the use of photo radar for speed enforcement purposes by any jurisdiction.

SEC. 3. Section 21455.7 of the Vehicle Code is amended to read:

21455.7. (a) At an intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the Traffic Manual of the Department of Transportation.

(b) For purposes of subdivision (a), the minimum yellow light change intervals relating to designated approach speeds provided in the Traffic Manual of the Department of Transportation are mandatory minimum yellow light intervals.

(c) A yellow light change interval may exceed the minimum interval established pursuant to subdivision (a).

CHAPTER 512

An act to amend Section 41851 of the Education Code, relating to school districts.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 41851 of the Education Code is amended to read:

41851. (a) For the 1992–93 fiscal year, from Section A of the State School Fund, the Superintendent of Public Instruction shall apportion to each school district or county superintendent of schools, as appropriate, an amount computed pursuant to this section. School districts and county superintendents of schools that provide transportation services by means of a joint powers agreement, a cooperative pupil transportation program, or a consortium shall receive transportation allowances pursuant to this section.

(b) For the 1992–93 fiscal year, each school district or county office of education shall receive a home-to-school transportation apportionment equal to the transportation allowance received in the prior fiscal year reduced by the amount of the special education transportation allowance identified pursuant to Section 41851.5.

(c) For the 1993–94 fiscal year and each fiscal year thereafter, each school district or county office of education shall receive the same home-to-school transportation allowance received in the prior fiscal year, but in no event shall that home-to-school transportation allowance exceed the prior year's approved home-to-school transportation costs, increased by the amount provided in the Budget Act.

(d) For the 1993–94 and each fiscal year thereafter, each county unified school district for which the county board of education serves as the governing board that meets all of the following criteria shall receive an apportionment in addition to the amount received pursuant to subdivision (c) of three hundred fifty thousand dollars ($350,000):

(1) Over 50 percent of the pupils enrolled in the school district require home-to-school transportation services.

(2) Total enrollment of the school district is less than 3,500.

(3) Total miles driven each fiscal year for home-to-school transportation exceeds 350,000.

(4) The school district received an apportionment pursuant to this subdivision in the 2000–01 and 2001–02 fiscal years.

(e) If, in any fiscal year, a county unified school district operates one or more necessary small schools pursuant to Article 4 (commencing with

Section 42280) of Chapter 7 that the district did not operate in the 1994–95 fiscal year, that district may not receive an apportionment pursuant to subdivision (d) in that fiscal year or in any subsequent fiscal year.

(f) If a later enacted statute amends subdivision (b) of Section 42280 or amends or adds any other provision of law authorizing a county unified school district that has 3,001 or more units of average daily attendance to be designated as a small school district for the purposes of Article 4 (commencing with Section 42280) of Chapter 7, subdivision (d) shall become inoperative on the date that the later enacted statute becomes operative.

(g) Each county unified school district that receives an additional apportionment pursuant to subdivision (d) shall report, by September 1 of each year, commencing with September 1, 1995, on the amount of revenues received and the funds expended for the home-to-school transportation program in the prior fiscal year. The report shall be submitted to the fiscal committees and education policy committees of the Legislature and to the Legislative Analyst.

CHAPTER 513

An act to amend Sections 8201 and 8203.1 of, and to add Section 8201.2 to, the Government Code, relating to notaries public.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 8201 of the Government Code is amended to read:

8201. (a) Every person appointed as notary public shall meet all of the following requirements:

(1) Be at the time of appointment a legal resident of this state, except as otherwise provided in Section 8203.1.

(2) Be not less than 18 years of age.

(3) For appointments made on or after January 1, 2005, have satisfactorily completed a six-hour course of study approved by the Secretary of State pursuant to Section 8201.2 concerning the functions and duties of a notary public.

(4) Have satisfactorily completed a written examination prescribed by the Secretary of State to determine the fitness of the person to exercise the functions and duties of the office of notary public. All questions shall

be based on the law of this state as set forth in the booklet of the laws of California relating to notaries public distributed by the Secretary of State.

(b) (1) Commencing January 1, 2005, each applicant for notary public shall provide satisfactory proof that he or she has completed the course of study required pursuant to paragraph (3) of subdivision (a) prior to approval of his or her appointment as a notary public by the Secretary of State.

(2) Commencing January 1, 2005, an applicant for notary public who holds a California notary public commission, and who has satisfactorily completed the six-hour course of study required pursuant to paragraph (1) at least one time, shall provide satisfactory proof when applying for reappointment as a notary public that he or she has satisfactorily completed a three-hour refresher course of study prior to reappointment as a notary public by the Secretary of State.

SEC. 2. Section 8201.2 is added to the Government Code, to read:

8201.2. (a) Commencing January 1, 2005, the Secretary of State shall review the course of study and any refresher course proposed by any vendor to be offered pursuant to paragraph (3) of subdivision (a) and paragraph (2) of subdivision (b) of Section 8201. If the course of study includes all material that a person is expected to know to satisfactorily complete the written examination required pursuant to paragraph (4) of subdivision (a) of Section 8201, the Secretary of State shall approve the course of study.

(b) (1) The Secretary of State shall, by regulation, prescribe an application form and adopt a certificate of approval for the notary public education course of study proposed by a vendor.

(2) The Secretary of State may also provide a notary public education course of study.

(c) The Secretary of State shall compile a list of all persons offering an approved course of study pursuant to subdivision (a) and shall provide the list with every booklet of the laws of California relating to notaries public distributed by the Secretary of State.

(d) (1) A person who provides notary public education and violates any of the regulations adopted by the Secretary of State for approved vendors is subject to a civil penalty not to exceed one thousand dollars ($1,000) for each violation and shall be required to pay restitution where appropriate.

(2) The local district attorney, city attorney, or the Attorney General may bring a civil action to recover the civil penalty prescribed pursuant to this subdivision.

SEC. 3. Section 8203.1 of the Government Code is amended to read:

8203.1. The Secretary of State may appoint and commission notaries public for the military and naval reservations of the Army, Navy,

Coast Guard, Air Force, and Marine Corps of the United States, wherever located in the state; provided, however, that the appointee shall be a citizen of the United States, not less than 18 years of age, and must meet the requirements set forth in paragraphs (3) and (4) of subdivision (a) of Section 8201.

CHAPTER 514

An act to add Article 12 (commencing with Section 8125) to Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Article 12 (commencing with Section 8125) is added to Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 12. Commercial Fisheries Capacity Reduction Program

8125. There is hereby established the Commercial Fisheries Capacity Reduction Account in the Fish and Game Preservation Fund. Fees collected pursuant to Section 8126 shall be deposited into the account. Money in the account shall be used to repay the California fishermen's share of any federal loans used in the federal West Coast Groundfish Fishery Capacity Reduction Program (Sec. 212, P.L. 107-206). The commission may establish, by regulation, any additional program elements necessary to conform state law to federal law, in order to allow California groundfish fishermen to fully participate in the federally established buy-back program for the Pacific groundfish fishery.

8126. The commission shall establish a capacity reduction fee on the taking of certain species of fish and shellfish, consistent with the West Coast Groundfish Fishery Capacity Reduction Program. In establishing the fee, the commission shall also consider the administrative cost associated with collecting these fees.

CHAPTER 515

An act to amend Section 18824 of, and to add Section 18640.5 to the Business and Professions Code, relating to boxing.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 18640.5 is added to the Business and Professions Code, to read:

18640.5. (a) The commission, at its regularly scheduled meetings, shall invite testimony from boxing stakeholders to identify actions that may lead to greater opportunities for its licensees to participate in major professional championship boxing contests in the State of California. The commission shall invite testimony that shall include, but not be limited to, the following:

(1) What cooperative actions may be taken by the private sector boxing stakeholders that may lead to greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(2) What role may public-private partnerships play that may lead to greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(3) What actions may local agencies take that may lead to greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(4) What actions may the commission take that may lead to greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(5) What actions may other state agencies take that may lead to greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(b) The stakeholders shall include, but not be limited to, boxing promoters, boxing event venues, boxers, sports news outlets, and local agencies that have an interest in providing greater opportunities for the commission's licensees to participate in major professional championship boxing contests in the State of California.

(c) Upon receipt of the above described testimony the commission shall annually make recommendations to the Governor and the Legislature that it determines may provide greater opportunities for the

commission's licensees to participate in major professional championship boxing contests in the State of California.

(d) Nothing in this section shall jeopardize the commission's duties and responsibilities to protect the safety and welfare of boxers and the public.

(e) Costs incurred by the commission in implementing this section shall be covered by existing resources of the commission.

SEC. 2. Section 18824 of the Business and Professions Code, as amended by Section 2 of Chapter 776 of the Statutes of 2001, is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars ($2,000,000), and the gross price for the contest or wrestling exhibit charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a fee of 5 percent, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, except that for any one boxing contest, the fee shall not exceed the amount of one hundred thousand dollars ($100,000), and a fee of up to 5 percent of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars ($1,000). The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars ($500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge. However, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar ($1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that

exceeds the numerical total of 25 percent of the total number of spectators.

(b) If the fee on admissions for any one boxing contest exceeds seventy thousand dollars ($70,000), the amount in excess of seventy thousand dollars ($70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund.

(c) As used in this section, ''person'' includes a promoter, club, individual, corporation, partnership, association or other organization, and ''wrestling exhibition'' means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

(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. 3. Section 18824 of the Business and Professions Code, as added by Section 2 of Chapter 436 of the Statutes of 2000, is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts for the contest or wrestling exhibit, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time pay to the commission a 5 percent fee, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, and up to 5 percent of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars ($1,000).

(b) The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars ($500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge; provided, however, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar ($1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 25 percent of the total number of spectators.

(c) As used in this section, ''person'' includes a promoter, club, individual, corporation, partnership, association or other organization, and ''wrestling exhibition'' means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

(d) This section shall become operative on January 1, 2006.

CHAPTER 516

An act to add Sections 364.05 and 366.05 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 364.05 is added to the Welfare and Institutions Code, to read:

364.05. Notwithstanding Section 364, in a county of the first class, a copy of the report required pursuant to subdivision (b) of Section 364 shall be provided to all parties at least 10 calendar days prior to the hearing. This may be accomplished by mailing the report at least 15 calendar days prior to the hearing to a party whose address is within the State of California, or at least 20 calendar days prior to the hearing to a party whose address is outside the State of California. The court shall grant a reasonable continuance, not to exceed 10 calendar days, upon request by any party or his or her counsel on the ground that the report was not provided at least 10 calendar days prior to the hearing as required by this section, unless the party or his or her counsel has expressly waived the requirement that the report be provided within the 10-day period or the court finds that the party's ability to proceed at the hearing is not prejudiced by the lack of timely service of the report. In making

this determination, the court shall presume that a party is prejudiced by the lack of timely service of the report, and may find that the party is not prejudiced only by clear and convincing evidence to the contrary.

SEC. 2. Section 366.05 is added to the Welfare and Institutions Code, to read:

366.05. Notwithstanding subdivision (c) of Section 366.21, in a county of the first class, any supplemental report filed in connection with a status review hearing held pursuant to subdivision (a) of Section 366 shall be provided to the parent or legal guardian and to counsel for the child at least 10 calendar days prior to the hearing. This may be accomplished by mailing the report at least 15 calendar days prior to the hearing to a party whose address is within the State of California, or at least 20 calendar days prior to the hearing to a party whose address is outside the State of California. The court shall grant a reasonable continuance, not to exceed 10 calendar days, upon request by any party or his or her counsel on the ground that the report was not provided at least 10 calendar days prior to the hearing as required by this section, unless the party or his or her counsel has expressly waived the requirement that the report be provided within the 10-day period or the court finds that the party's ability to proceed at the hearing is not prejudiced by the lack of timely service of the report. In making this determination, the court shall presume that a party is prejudiced by the lack of timely service of the report, and may find that the party is not prejudiced only by clear and convincing evidence to the contrary.

CHAPTER 517

An act to amend Section 5019.65 of the Public Resources Code, relating to public resources.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. The Legislature finds and declares that a new state park unit classification option of cultural reserve, which is to be used for public land in the state park system as determined by the State Park and Recreation Commission, is necessary to more accurately and respectfully classify state park units containing cultural resources, as described in Section 5019.65 of the Public Resources Code, as amended by this act.

SEC. 2. Section 5019.65 of the Public Resources Code is amended to read:

5019.65. State reserves consist of areas embracing outstanding natural or scenic characteristics or areas containing outstanding cultural resources of statewide significance. State reserve units may be established in the terrestrial or nonmarine aquatic (lake or stream) environments of the state and shall be further classified as one of the following types:

(a) State natural reserves, consisting of areas selected and managed for the purpose of preserving their native ecological associations, unique faunal or floral characteristics, geological features, and scenic qualities in a condition of undisturbed integrity. Resource manipulation shall be restricted to the minimum required to negate the deleterious influence of man.

Improvements undertaken shall be for the purpose of making the areas available, on a day use basis, for public enjoyment and education in a manner consistent with the preservation of their natural features. Living and nonliving resources contained within state natural reserves shall not be disturbed or removed for other than scientific or management purposes.

(b) State cultural reserves, consisting of areas selected and managed for the purpose of preserving and protecting the integrity of places that contain historic or prehistoric structures, villages, or settlements, archaeological features, ruins, artifacts, inscriptions made by humans, burial grounds, landscapes, hunting or gathering sites, or similar evidence of past human lives or cultures. These areas may also be places of spiritual significance to California Native Americans. Within state cultural reserves, the highest level of resource protection shall be sought. Improvements may be undertaken for the purpose of providing public access, enjoyment, and education, and for cultural resource protection. Improvements made for the purpose of cultural resource protection shall take into account the possible need for access to the site for ceremonial or spiritual purposes. Living and nonliving resources contained within state cultural reserves may be used for ceremonial or spiritual purposes, consistent with other laws, and if the use is not harmful to threatened or endangered species or to the cultural resources intended for protection by this designation. Management actions shall be consistent with the preservation of cultural resources and with federal and state laws.

CHAPTER 518

An act to amend Section 11205 of, to add Section 11205.2 to, and to repeal and add Section 11214 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 11205 of the Vehicle Code, as amended by Section 455.5 of Chapter 931 of the Statutes of 1998, is amended to read:

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each superior court in the state in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term ''traffic violator school'' followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term ''traffic violator school'' followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(e) When the department transmits any referral list pursuant to subdivision (a), each court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list. In its written notice, the court shall set forth the specific basis and rationale for its decision.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by the appellate division of the superior court or a court of higher jurisdiction, the department may not fail to publish a referral list on the grounds that there exists pending litigation or appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j) (1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each superior court in the state. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

(1) The name of each school, grouped by owner.

(2) The business office address.

(3) The business office telephone number.

(4) The license number.

(5) The owner's name.

(6) The operator's name.

(*l*) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports

forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

(n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

SEC. 2. Section 11205.2 is added to the Vehicle Code, to read:

11205.2. (a) As used in this chapter, court assistance program (CAP) is a public or private nonprofit agency that provides services, under contract with a court, to process traffic violators.

(b) A court may use a CAP to assist the court in performing services related to the processing of traffic violators. As used in this section, ''services'' includes those services relating to the processing of traffic violators at, and for, the court.

(c) Whenever a CAP monitors a designated traffic violator school, the CAP shall follow the procedures set forth in subdivision (d) of Section 11214. The CAP shall send its monitoring report to the department for review, evaluation, processing and any further action determined necessary by the department. A copy of the report shall also be provided to the court. The role of a CAP is limited to that set forth in this chapter. Nothing in this chapter abrogates or limits the inherent powers of the courts under Article VI of the California Constitution.

(d) When a monitoring report is adverse, the CAP shall send a copy to the licensee within 30 days after the date of the monitoring. Copies of all other monitoring reports shall be available to a licensee upon request and payment of a fee. The fee may not exceed the cost of postage and photocopying.

(e) The department or a court may not remove the name of a traffic violator school that does not have a suspended or revoked license from any student referral list published by the department or CAP pursuant to Section 11205, unless the school owner is provided notice and the opportunity to request a hearing conducted by the department or a court, to determine whether there are sufficient grounds to warrant removal of the school's name. Any decision to remove a name may be appealed to any court of competent jurisdiction.

(f) In the event that a CAP, acting pursuant to a contract with a court, audits or inspects the records of a traffic violator school, the CAP shall

use the same process and procedures used by the department to conduct the audit or inspection.

(g) This section does not preclude a court from entering into a contract with public or private nonprofit agencies to provide services to the court, other than those described in this section.

SEC. 3. Section 11214 of the Vehicle Code is repealed.

SEC. 4. Section 11214 is added to the Vehicle Code, to read:

11214. (a) Except as provided in this chapter, the department may audit, inspect, and monitor, all licensed traffic violator schools.

(b) The department may annually audit the records of a licensee. Auditing includes, but is not limited to, the review and examination of business records, class records when applicable, business practices, and the content of the program of instruction set forth in the lesson plan or curriculum of a licensee.

(c) Inspecting includes, but is not limited to, the review of the business office, branch office, and applicable classroom facilities of a licensee.

(d) Monitoring includes the onsite review of the actual presentation of the program of traffic safety instruction provided in a classroom mode of instruction.

SEC. 5. Nothing in this act restricts or changes the authority of a court to offer court authorized or court approved programs, including, but not limited to, home study programs, to traffic violators.

CHAPTER 519

An act to amend Sections 20057, 20161, 20501, 20585, 20588, 20590, 20610, 20611, 20752, 20816, 20890.2, 20907, 21013, 21220, 21571, 21572, 21661, 21663, 22009.03, 22009.1, 22013.7, 22013.78, 22018, 22156, 22502, 22754, and 22825 of, to add Sections 20672.5, 21220.5, and 22817.5 to, to repeal Sections 20677.1, 20732, 21253, 21431, and 22216 of, to repeal Chapter 10 (commencing with Section 20860) of Part 3 of Division 5 of Title 2 of, and to repeal and add Section 21252 of, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 20057 of the Government Code is amended to read:

20057. ''Public agency'' also includes the following:

(a) The Commandant, Veterans' Home of California, with respect to employees of the Veterans' Home Exchange and other post fund activities whose compensation is paid from the post fund of the Veterans' Home of California.

(b) Any auxiliary organization operating pursuant to Chapter 7 (commencing with Section 89900) of Part 55 of the Education Code and in conformity with regulations adopted by the Trustees of the California State University and any auxiliary organization operating pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code and in conformity with regulations adopted by the Board of Governors of the California Community Colleges.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

(f) A section of the California Interscholastic Federation.

(g) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of this system or the State Teachers' Retirement Plan, and their immediate families, and employees of any credit union. For the purposes of this subdivision, ''immediate family'' means those persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of this system or the State Teachers' Retirement Plan. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All the payments made by the credit union that are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of this system. For purposes of this subdivision, a credit union is not deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 5 (commencing with Section 20460) prior to January 1, 1988. After January 1, 1988, the board may not enter into a contract with any credit union as a public agency.

(h) Any county superintendent of schools that was a contracting agency on July 1, 1983, and any school district or community college district that was a contracting agency with respect to local policemen, as defined in Section 20430, on July 1, 1983.

(i) Any school district or community college district that has established a police department, pursuant to Section 39670 or 72330 of the Education Code, and has entered into a contract with the board on or after January 1, 1990, for school safety members, as defined in Section 20444.

(j) A nonprofit corporation formed for the primary purpose of assisting the development and expansion of the educational, research, and scientific activities of a district agricultural association formed pursuant to Part 3 (commencing with Section 3801) of Division 3 of the Food and Agricultural Code, and the nonprofit corporation described in the California State Exposition and Fair Law (former Article 3 (commencing with Section 3551) of Chapter 3 of Part 2 of Division 3 of the Food and Agricultural Code, as added by Chapter 15 of the Statutes of 1967).

(k) (1) A public or private nonprofit corporation that operates a regional center for the developmentally disabled in accordance with Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(2) A public or private nonprofit corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that operates a rehabilitation facility for the developmentally disabled and provides services under a contract with either (A) a regional center for the developmentally disabled, pursuant to paragraph (3) of subdivision (a) of Section 4648 of the Welfare and Institutions Code, or (B) the Department of Rehabilitation, pursuant to Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10 of the Welfare and Institutions Code, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1.

(3) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the regional center or the rehabilitation facility described in this subdivision. Notwithstanding any other provision of this part, the agency may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(*l*) Independent data-processing centers formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code, as it read on December 31, 1990. An agency included pursuant to this subdivision shall only provide benefits that are identical to those provided to a school member.

(m) Any local agency formation commission.

(n) A nonprofit corporation organized for the purpose of and engaged in conducting a citrus fruit fair as defined in Section 4603 of the Food and Agricultural Code.

(o) (1) A public or private nonprofit corporation that operates an independent living center providing services to severely handicapped people and established pursuant to federal P.L. 93-112, that receives the approval of the board, and that provides at least three of the following services:

(A) Assisting severely handicapped people to obtain personal attendants who provide in-home supportive services.

(B) Locating and distributing information about housing in the community usable by severely handicapped people.

(C) Providing information about financial resources available through federal, state and local government, and private and public agencies to pay all or part of the cost of the in-home supportive services and other services needed by severely handicapped people.

(D) Counseling by people with similar disabilities to aid the adjustment of severely handicapped people to handicaps.

(E) Operation of vans or buses equipped with wheelchair lifts to provide accessible transportation to otherwise unreachable locations in the community where services are available to severely handicapped people.

(2) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the independent living center.

(3) Notwithstanding any other provisions of this part, the public or private nonprofit corporation may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(p) A hospital that is managed by a city legislative body in accordance with Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4.

(q) The Tahoe Transportation District that is established by Article IX of Section 66801.

(r) The California Firefighter Joint Apprenticeship Program formed pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(s) A public health department or district that is managed by the governing body of a county of the 15th class, as defined by Sections 28020 and 28036, as amended by Chapter 1204 of the Statutes of 1971.

(t) A nonprofit corporation or association conducting an agricultural fair pursuant to Section 25905 may enter into a contract with the board

for the participation of its employees as members of this system, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The nonprofit corporation or association shall be deemed a ''public agency'' only for this purpose.

(u) An auxiliary organization established pursuant to Article 2.5 (commencing with Section 69522) of Chapter 2 of Part 42 of the Education Code upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The auxiliary organization is a ''public agency'' only for this purpose.

(v) The Western Association of Schools and Colleges upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The association shall be deemed a ''public agency'' only for this purpose.

SEC. 1.5. Section 20057 of the Government Code is amended to read:

20057. ''Public agency'' also includes the following:

(a) The Commandant, Veterans' Home of California, with respect to employees of the Veterans' Home Exchange and other post fund activities whose compensation is paid from the post fund of the Veterans' Home of California.

(b) Any auxiliary organization operating pursuant to Chapter 7 (commencing with Section 89900) of Part 55 of the Education Code and in conformity with regulations adopted by the Trustees of the California State University and any auxiliary organization operating pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code and in conformity with regulations adopted by the Board of Governors of the California Community Colleges.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

(f) A section of the California Interscholastic Federation.

(g) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of this system or the State Teachers'

Retirement Plan, and their immediate families, and employees of any credit union. For the purposes of this subdivision, ''immediate family'' means those persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of this system or the State Teachers' Retirement Plan. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All the payments made by the credit union that are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of this system. For purposes of this subdivision, a credit union is not deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 5 (commencing with Section 20460) prior to January 1, 1988. After January 1, 1988, the board may not enter into a contract with any credit union as a public agency.

(h) Any county superintendent of schools that was a contracting agency on July 1, 1983, and any school district or community college district that was a contracting agency with respect to local policemen, as defined in Section 20430, on July 1, 1983.

(i) Any school district or community college district that has established a police department, pursuant to Section 39670 or 72330 of the Education Code, and has entered into a contract with the board on or after January 1, 1990, for school safety members, as defined in Section 20444.

(j) A nonprofit corporation formed for the primary purpose of assisting the development and expansion of the educational, research, and scientific activities of a district agricultural association formed pursuant to Part 3 (commencing with Section 3801) of Division 3 of the Food and Agricultural Code, and the nonprofit corporation described in the California State Exposition and Fair Law (former Article 3 (commencing with Section 3551) of Chapter 3 of Part 2 of Division 3 of the Food and Agricultural Code, as added by Chapter 15 of the Statutes of 1967).

(k) (1) A public or private nonprofit corporation that operates a regional center for the developmentally disabled in accordance with Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(2) A public or private nonprofit corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that operates a rehabilitation facility for the developmentally disabled and provides services under a contract with either (A) a regional center for the developmentally disabled, pursuant to paragraph (3) of subdivision (a) of Section 4648 of the Welfare and Institutions Code, or (B) the Department of Rehabilitation, pursuant to Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10 of the Welfare and

Institutions Code, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1.

(3) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the regional center or the rehabilitation facility described in this subdivision. Notwithstanding any other provision of this part, the agency may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(*l*) Independent data-processing centers formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code, as it read on December 31, 1990. An agency included pursuant to this subdivision shall only provide benefits that are identical to those provided to a school member.

(m) Any local agency formation commission.

(n) A nonprofit corporation organized for the purpose of and engaged in conducting a citrus fruit fair as defined in Section 4603 of the Food and Agricultural Code.

(o) (1) A public or private nonprofit corporation that operates an independent living center providing services to severely handicapped people and established pursuant to federal P.L. 93-112, that receives the approval of the board, and that provides at least three of the following services:

(A) Assisting severely handicapped people to obtain personal attendants who provide in-home supportive services.

(B) Locating and distributing information about housing in the community usable by severely handicapped people.

(C) Providing information about financial resources available through federal, state and local government, and private and public agencies to pay all or part of the cost of the in-home supportive services and other services needed by severely handicapped people.

(D) Counseling by people with similar disabilities to aid the adjustment of severely handicapped people to handicaps.

(E) Operation of vans or buses equipped with wheelchair lifts to provide accessible transportation to otherwise unreachable locations in the community where services are available to severely handicapped people.

(2) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the independent living center.

(3) Notwithstanding any other provisions of this part, the public or private nonprofit corporation may elect by appropriate provision or

amendment of its contract not to provide credit for service prior to the effective date of its contract.

(p) A hospital that is managed by a city legislative body in accordance with Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4.

(q) The Tahoe Transportation District that is established by Article IX of Section 66801.

(r) The California Firefighter Joint Apprenticeship Program formed pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(s) A public health department or district that is managed by the governing body of a county of the 15th class, as defined by Sections 28020 and 28036, as amended by Chapter 1204 of the Statutes of 1971.

(t) A nonprofit corporation or association conducting an agricultural fair pursuant to Section 25905 may enter into a contract with the board for the participation of its employees as members of this system, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The nonprofit corporation or association shall be deemed a ''public agency'' only for this purpose.

(u) An auxiliary organization established pursuant to Article 2.5 (commencing with Section 69522) of Chapter 2 of Part 42 of the Education Code upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The auxiliary organization is a ''public agency'' only for this purpose.

(v) The Western Association of Schools and Colleges upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The association shall be deemed a ''public agency'' only for this purpose.

(w) The State Assistance Fund for Enterprise, Business, and Industrial Development Corporation upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1.

SEC. 2. Section 20161 of the Government Code is amended to read:

20161. Notwithstanding any other provision of this part or of Section 13943.2 or 16302.1 to the contrary, the following shall apply:

(a) When there has been a payment of death benefits, a return of accumulated contributions, a contribution adjustment, or a deposit of contributions, this system may refrain from collecting an underpayment of accumulated contributions if the amount to be collected is two hundred fifty dollars ($250) or less.

(b) When there has been a payment of death benefits, a return of accumulated contributions, a contribution adjustment, or a deposit of contributions, and there is a balance of fifty dollars ($50) or less remaining posted to a member's individual account, or an overpayment

of fifty dollars ($50) or less was received, this system may dispense with a return of accumulated contributions.

(c) When there is a positive or negative balance of two hundred fifty dollars ($250) or less remaining posted to a member's individual account, or the balance exceeds two hundred fifty dollars ($250) but the difference to the monthly allowance unmodified by any optional settlement is less than five dollars ($5), this system may dispense with any recalculation of, or other adjustment to, benefit payments.

(d) The dollar amounts specified in subdivisions (a) and (c) shall be adjusted in accordance with any changes in the dollar amounts specified in Section 13943.2.

SEC. 3. Section 20501 of the Government Code is amended to read:

20501. Contracts with school employers may include school district employees in this system only with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement Plan.

SEC. 4. Section 20585 of the Government Code is amended to read:

20585. (a) Notwithstanding any other provision of this article, the board may enter into an agreement with the governing body of a contracting agency whose contract has been in effect for at least five years and the board of supervisors of a county maintaining a county retirement system for termination of the contracting agency's participation in this system and inclusion of its employees in the county retirement system.

(b) The agreement shall contain provisions the board finds necessary to protect the interests of this system, including provisions for determination of the amount, time, and manner of transfer of cash or securities, or both, to be transferred to the county system representing the value of the interests in the retirement fund of the contracting agency and its employees by reason of accumulated contributions credited to the agency and its employees. However, the amount transferred may not exceed the amount of the accumulated contributions. Any amount representing the difference between the value of the interests in the retirement fund of the contracting agency and its employees, and the accumulated contributions credited to the agency and its employees, shall be credited to the reserve under Section 20174. The agreement may also contain any other provisions that the board deems necessary to address issues related to the transfer, including, but not limited to, benefits subject to an outstanding domestic relations order and benefits subject to a lien.

(c) All liability of this system with respect to members and retired persons under the contract shall cease and shall become the liability of the county system as of the date of termination specified in the agreement. Liability of the county retirement system shall be for

payment of benefits in accordance with Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 applicable to it except that allowances of persons retired on the termination date and their beneficiaries and of beneficiaries of deceased members or retired persons who are receiving allowances on that date, shall be continued in at least the amount provided under the agency's contract as it was on that date. The termination may not affect the contribution rate of any member in any other employment under this system on the date of termination or any retirement allowance or other benefit based on service to another employer being paid on the termination date.

(d) Any member who becomes a member of a county retirement system upon the contract termination shall be subject to this part and Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been had he or she been a member of the county retirement system during his or her membership in this system under the terminated contract.

(e) Upon execution of the agreement, a contracting agency that is an employer under Chapter 9 (commencing with Section 20790) shall cease to have that status, and the accumulated contributions of the contracting agency shall be determined and thereafter held as provided in Section 20834.

SEC. 5. Section 20588 of the Government Code is amended to read:

20588. (a) Notwithstanding any other provision of this article, the board may, pursuant to this section and Section 31657, enter into an agreement with the board of retirement of a county maintaining a county retirement system, for termination of participation of a public agency whose contract has been in effect for at least five years in this system or the state with respect to certain safety members who have ceased to be employed by the public agency or the state and have been employed by a county, fire authority, or district as a result of a transfer of firefighting or law enforcement functions from the public agency or the state to the county, fire authority, or district and inclusion of the former public agency employees in that county retirement system.

(b) The agreement shall contain provisions the board finds necessary to protect the interests of this system, including provisions for determination of the amount, time, and manner of transfer of cash or securities, or both, to be transferred to the county system representing the actuarial value of the interests in the retirement fund of the public agency or the state and the transferred employees by reason of accumulated contributions credited to that public agency or the state and the employees transferred. The agreement may also contain any other provisions that the board deems necessary to address issues related to the

transfer, including, but not limited to, benefits subject to an outstanding domestic relations order and benefits subject to a lien. The agreement shall apply only to employees who are employed by the county or district on the effective date of the agreement.

(c) All liability of this system with respect to the members transferred under that agreement shall cease and shall become the liability of the county retirement system as of the date of transfer specified in the agreement. Liability of the county retirement system shall be for payment of benefits to transferred employees in accordance with Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3.

(d) Any member transferred who becomes a member of a county retirement system upon that transfer date shall be subject to provisions of this part and of Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been had he or she been a member of the county retirement system during his or her membership in this system.

(e) This section shall apply only in Kern, Los Angeles, and Orange Counties.

SEC. 6. Section 20590 of the Government Code is amended to read:

20590. (a) Notwithstanding any other provision of this article, the board may enter into an agreement with the governing body of a contracting agency, other than a housing authority, and the governing body of a city with a population in excess of 2,000,000 and maintaining its own retirement system, for termination of the contracting agency's participation in this system and inclusion of the employees in the city retirement system.

(b) The agreement shall contain provisions the board finds necessary to protect the interests of this system, including provisions for determination of the amount, time, and manner of transfer of cash or securities, or both, to be transferred to the city system representing the value of the interests in the retirement fund of the contracting agency and its employees by reason of contributions and interest credited to the agency and its employees. The agreement may also contain any other provisions that the board deems necessary to address issues related to the transfer, including, but not limited to, benefits subject to an outstanding domestic relations order and benefits subject to a lien.

(c) All liability of this system with respect to members and retired persons under the contract shall cease and shall become the liability of the city system as of the date of termination specified in the agreement. Liability of the city system shall be for payment of benefits to persons retired on the termination date and their beneficiaries and of

beneficiaries of deceased members in at least the amount provided under the agency's contract as it was on that date. The termination may not affect the contribution rate of any member in any other employment under this system on the date of termination or any retirement allowance or other benefit based on service.

(d) Any member who becomes a member of a city system upon the contract termination shall be subject to those provisions of this part extending rights to a member or subjecting the member to limitations because of membership in another retirement system to the same extent that the member would have been had he or she been a member of the city system during his or her membership in this system under the terminated contract.

SEC. 7. Section 20610 of the Government Code is amended to read:

20610. Every county superintendent of schools shall enter into a contract with the board for the inclusion in this system of (a) all of the employees of the office of county superintendent whose compensation is paid from the county school service fund other than employees electing pursuant to Section 1313 of the Education Code to continue in membership in a county system; and (b) all of the employees of school districts and community college districts existing on July 1, 1949, or thereafter formed, within his or her jurisdiction, other than school districts that are contracting agencies or that maintain a district, joint district, or other local retirement system, in respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement Plan. The effective date of each contract shall be not later than July 1, 1949. For the purposes of this part those school district employees shall be considered to be employees of the county superintendent of schools having jurisdiction over the school district by which they are employed and service to the district shall be considered as service to the county superintendent of schools.

SEC. 8. Section 20611 of the Government Code is amended to read:

20611. A regional occupational center established pursuant to Chapter 9 (commencing with Section 52300) of Division 4 of the Education Code by two or more school districts by a joint powers agreement shall be deemed a school district for purposes of this part. The board and the county superintendent of schools, upon the request of the governing body of any center in the county, shall amend the contract entered into under this chapter to include the employees of the center who are not eligible to membership in the State Teachers' Retirement Plan. Credit shall not be granted for any service in that employment prior to the effective date of the amendment. However, on the request of the governing body of the center, the amendment may provide that the membership of any person becoming a member in that employment on the effective date of the amendment shall be retroactive to the date of that

person's entry into that employment. If the amendment provides for the retroactive membership, both the member and the center shall contribute to the retirement fund for the period the amounts they would have contributed had the amendment been in effect on the date of the entry into employment.

SEC. 9. Section 20672.5 is added to the Government Code, to read:

20672.5. Whenever a member's contribution rate is temporarily reduced by statute, a memorandum of understanding, or the Director of the Department of Personnel Administration, those reductions shall be limited to the payment of member contributions during the reduction period and do not apply to the purchase of service credit or the redeposit of member contributions. The purchase of service credit and the redeposit of member contributions shall be subject to the normal rate of contribution for the member in effect immediately prior to the temporary rate reduction.

SEC. 10. Section 20677.1 of the Government Code is repealed.

SEC. 11. Section 20732 of the Government Code is repealed.

SEC. 12. Section 20752 of the Government Code is amended to read:

20752. (a) A member of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement Plan, the University of California Retirement System, or a county retirement system, who has withdrawn accumulated contributions from this system shall have the right to redeposit those contributions, subject to the same conditions as imposed for redeposits of accumulated contributions by Section 20750, including the rights that he or she would have had under Section 20638 had he or she not withdrawn his or her contributions.

(b) Provisions of this section extending a right to redeposit accumulated contributions withdrawn from this system shall also apply to members of any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with, and accepted by, the board or any retirement system established by, or pursuant to, the charter of a city or city and county or by any other public agency of this state which system, in the opinion of the board, provides a similar modification of rights and benefits because of membership in this system and with respect to which the governing body of the city, city and county or public agency and the board have entered into agreement pursuant to Section 20351.

(c) A member who elects to redeposit under this section shall have the same rights as a member who has elected pursuant to Section 20731 to leave his or her accumulated contributions on deposit in the fund.

SEC. 13. Section 20816 of the Government Code is amended to read:

20816. (a) Notwithstanding any other provision of this part, all assets of an employer shall be used in the determination of the employer contribution rate for the membership comprising the basis of the computation. Assets held shall be recognized over the same funding period used to amortize unfunded accrued actuarial obligations, whether in excess of the accrued actuarial obligation or not, using the entry age normal funding method.

(b) On and after January 1, 1999, contracting agencies for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer employer assets to member-accumulated contribution accounts to satisfy all or a portion of the member contributions required by this part. That transfer shall be over a 12-month period provided the actuarial value of assets exceeds the present value of benefits. In determining the present value of benefits and the actuarial value of assets for purposes of this part, liabilities and assets attributed to the 1959 survivor allowance may not be included. On and after January 1, 2003, a transfer of assets may not be made pursuant to this subdivision unless all or the same portion of the member contributions of each member in a membership classification are satisfied through the transfer. An employer electing a transfer of assets pursuant to this subdivision shall satisfy the members' contributions for a period of not less than one month and not more than one year.

(c) On and after January 1, 2002, any contracting agency for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer from the contracting agency's employer account excess assets, as determined by the board subject to the requirements and limitations of Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree health account established by the board, in its discretion, in the contracting agency's employer account pursuant to Section 401(h) of the Internal Revenue Code (26 U.S.C. 401(h)) for the purpose of providing health benefits to the contracting agency's retirees and their covered dependents. The board may, in its discretion, transfer excess assets from the contracting agency's employer account to that contracting agency's retiree health account within that agency's employer account, if the transfer meets the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall be used solely for the payment of current retiree health liabilities. That qualified transfer shall be made only once each year. The board may adopt regulations necessary to implement this subdivision. Notwithstanding

any other provision of law, the regulations may provide for the nonforfeiture of accrued pension benefits of participants and beneficiaries of a plan from which excess assets are transferred to the extent necessary for the transfer to meet the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may include any other provision necessary under Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the purposes of this subdivision.

(d) For the purpose of this section, ''employer'' means any contracting agency, the state, or a school employer.

(e) The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

SEC. 14. Chapter 10 (commencing with Section 20860) of Part 3 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 15. Section 20890.2 of the Government Code is amended to read:

20890.2. (a) Past miscellaneous service performed as an employee of the Department of the California Highway Patrol while a student at the department's training school established pursuant to Section 2262 of the Vehicle Code shall be converted to patrol member service if all of the following apply:

(1) The service was rendered by a current employee of the Department of the California Highway Patrol.

(2) The service is credited to an employee who has patrol member service credit for service performed with the Department of the California Highway Patrol.

(3) The member failed to file a written election to retain the service as miscellaneous service within 90 days of notification by the board.

(b) The Department of the California Highway Patrol shall notify the board, in the manner established by the board, of any employee who is eligible for conversion of service pursuant to this section.

SEC. 16. Section 20907 of the Government Code is amended to read:

20907. Any funds transferred to this system on account of liability for additional service credit granted pursuant to Sections 20901, 20902, 20904, or former Section 20822, as added by Chapter 450 of the Statutes of 1992, shall be paid over a time period acceptable to the employer and the board, but in no case shall that period exceed five years.

SEC. 17. Section 21013 of the Government Code is amended to read:

21013. ''Leave of absence'' also means any time, up to one year, during which a member is granted an approved maternity or paternity

leave and returns to employment at the end of the approved leave for a period of time at least equal to that leave. Any member electing to receive service credit for that leave of absence shall make the contributions as specified in Sections 21050 and 21052. This section applies to both past and future maternity or paternity leaves of absences by members of the system.

SEC. 18. Section 21220 of the Government Code is amended to read:

21220. (a) A person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency, unless the employment qualifies for service credit in the University of California Retirement System or the State Teachers' Retirement Plan, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article. A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.

(b) Any retired member employed in violation of this article shall:

(1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law.

(2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

(c) Any public employer that employs a retired member in violation of this article shall:

(1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.

(2) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

SEC. 19. Section 21220.5 is added to the Government Code, to read:

21220.5. A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.

SEC. 20. Section 21252 of the Government Code is repealed.

SEC. 21. Section 21252 is added to the Government Code, to read:

21252. (a) A member's written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member's discontinuance of state service shall be determined in accordance with Section 20160.

(b) An application for retirement may only be submitted by or for a member who is living on the date the application is actually received by the system. If the member has been deemed incompetent to act on his or her own behalf continuously from the last day for which salary was payable, the effective date of retirement may not be earlier than one year prior to the month in which an application submitted by the guardian of the member's estate is received by the system.

(c) Notwithstanding any other provision of law, a member who separates from a retirement system that has established reciprocity with this system with the intention of retiring concurrently under both systems and who submits his or her application for retirement for service to the board within nine months after that separation, may have his or her application received and acted upon by this system as if the application were submitted pursuant to this section.

SEC. 22. Section 21253 of the Government Code is repealed.

SEC. 23. Section 21431 of the Government Code is repealed.

SEC. 24. Section 21571 of the Government Code is amended to read:

21571. (a) If the death benefit provided by Section 21532 is payable on account of a member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph 1 of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made, in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian or conservator of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid three hundred sixty dollars ($360) if there is one child or four hundred thirty dollars ($430) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of one hundred eighty dollars ($180) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid one hundred eighty dollars ($180) per month.

(B) If there are two children, the children shall be paid three hundred sixty dollars ($360) per month divided equally between them.

(C) If there are three or more children, the children shall be paid four hundred thirty dollars ($430) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, shall be paid one hundred eighty dollars ($180) per month. No allowance shall be paid under this paragraph, while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be

seventy dollars ($70) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach age 22, each of the member's dependent parents who has attained or attains the age of 62, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid one hundred eighty dollars ($180) per month.

(c) ''Stepchildren,'' for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) The amendments to this section by Chapter 1617 of the Statutes of 1971 shall apply only to 1959 survivor allowances payable April 1, 1972, and thereafter.

(e) This section does not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(f) On and after the date determined by the board, all assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(g) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section is projected to have a surplus in its 1959 survivor benefit account as of the date the assets and liabilities are first pooled, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section is projected to have a deficit in its 1959 survivor benefit account as of the date the assets and liabilities are first pooled, its rate of contribution shall be increased until the projected deficit is paid.

SEC. 25. Section 21572 of the Government Code is amended to read:

21572. (a) In lieu of benefits provided in Section 21571, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member

who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid four hundred fifty dollars ($450) per month if there is one child or five hundred thirty-eight dollars ($538) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of two hundred twenty-five dollars ($225) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid two hundred twenty-five dollars ($225) per month.

(B) If there are two children, the children shall be paid four hundred fifty dollars ($450) per month divided equally between them.

(C) If there are three or more children, the children shall be paid five hundred thirty-eight dollars ($538) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid two hundred twenty-five dollars

($225) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be eighty-eight dollars ($88) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars ($225) per month.

(c) ''Stepchildren,'' for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) This section shall apply to beneficiaries receiving 1959 survivor allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

(e) This section shall apply, with respect to benefits payable on and after July 1, 1981, to all members employed by a school employer, and school safety members employed with a school district or community college district as defined in subdivision (i) of Section 20057, except that it shall not apply, without contract amendment, with respect to safety members who became members after July 1, 1981. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of all miscellaneous members employed by a school employer and all safety members who are members on July 1, 1981.

(f) This section does not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(g) On and after January 1, 2000, and until January 1, 2010, all state members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state members not covered by Section 21573 or 21574.7 shall be covered by this section.

(h) On and after the date determined by the board, all assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be

established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(i) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section is projected to have a surplus in its 1959 survivor benefit account as of the date the assets and liabilities are first pooled, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section is projected to have a deficit in its 1959 survivor benefit account as of the date the assets and liabilities are first pooled, its rate of contribution shall be increased until the projected deficit is paid.

SEC. 26. Section 21661 of the Government Code is amended to read:

21661. (a) The board shall contract with carriers offering long-term care insurance plans.

The long-term care insurance plans shall be made available periodically during open enrollment periods determined by the board.

(b) The board shall award contracts to carriers who are qualified to provide long-term care benefits, and may develop and administer self-funded long-term care insurance plans. The board may offer one or more long-term care insurance plans.

(c) The long-term care insurance plans shall include home, community, and institutional care and shall, to the extent determined by the board, provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10231) of Part 2 of Division 2 of the Insurance Code, if the carrier has been approved by the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) The classes of persons who shall be eligible to enroll are:

(1) Active and retired members and annuitants of the Public Employees' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(2) Active and retired members and annuitants of the State Teachers' Retirement Plan, and their spouses, parents, siblings, and spouses' parents.

(3) Active and retired members and annuitants of the Judges' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(4) Active and retired members and annuitants of the Judges' Retirement System II, and their spouses, parents, siblings, and spouses' parents.

(5) Active and retired members and annuitants of the Legislators' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(6) Members of the California Assembly and Senate and their spouses, parents, siblings, and spouses' parents.

(7) Active and retired members and annuitants, and other classes of employees of a public agency that is located in this state, and their spouses, parents, siblings, and spouses' parents.

(e) An individual specified in paragraphs (1) to (7), inclusive, of subdivision (d) may not be eligible unless he or she resides in the United States, its territories and possessions, or in a country in which a provider network can be established comparable in quality and effectiveness to those established in the United States.

(f) Notwithstanding paragraphs (1) to (7), inclusive, of subdivision (d), no person may be enrolled unless he or she meets the eligibility and underwriting criteria established by the board.

(g) Notwithstanding paragraphs (1) to (7), inclusive, of subdivision (d), enrollment of active employees of the State of California shall be subject to Section 19867.

(h) The board shall establish eligibility criteria for enrollment, establish appropriate underwriting criteria for potential enrollees, define the scope of covered benefits, define the criteria to receive benefits, and set any other standards as needed. As used in this section, ''sibling'' shall mean a sibling who is at least 18 years of age.

(i) The long-term care insurance plans may not become part of, or subject to, the retirement or health benefits programs administered by the system.

(j) For any self-funded long-term care plan developed by the board, the premiums shall be deposited in the Public Employees' Long-term Care Fund.

SEC. 27. Section 21663 of the Government Code is amended to read:

21663. (a) The board may enter into contracts with long-term care insurance carriers, pursuant to Section 21661, and with entities offering services relating to the administration of long-term care plans, without compliance with any provisions of law relating to competitive bidding.

(b) The board may fix the beginning and ending dates of the contracts in a manner it deems consistent with administration of this part. The board shall periodically review each contract according to a reasonable schedule mutually agreed upon by the parties. Irrespective of any agreed-upon termination date or period for review, the board may terminate a contract at any time under conditions determined by the board, and may automatically renew a contract from term to term, or for any lesser period it deems appropriate.

(c) The Department of General Services shall review and approve all contracts entered into pursuant to this section, to ensure that each written instrument contains the principal necessary provisions and proper technical terms and phrases, is formally correct, is arranged in proper and methodical order, and is adapted to the specific requirements of the agreement between the parties. The department's review and approval does not supersede the board's authority to negotiate and reach agreement with long-term care insurance carriers or with entities offering services relating to the administration of long-term care plans, with respect to the rates, terms, and conditions of contracts entered into pursuant to this section.

SEC. 28. Section 22009.03 of the Government Code is amended to read:

22009.03. ''Public agency'' also includes a school district, a county superintendent of schools, and a regional occupational center or program established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, with respect to employees eligible for membership in the State Teachers' Retirement Plan.

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

SEC. 29. Section 22009.1 of the Government Code is amended to read:

22009.1. ''Retirement system'' includes:

(a) A pension, annuity, retirement or similar fund or system established by a public agency and covering only positions of that agency.

(b) The Public Employees' Retirement System with respect only to employees of the state and employees of the University of California in positions covered by that system.

(c) The Public Employees' Retirement System with respect to employees of all school districts in positions covered under each contract entered into by a county superintendent of schools and the system.

(d) The State Teachers' Retirement System with respect to all employees in positions subject to coverage under the Defined Benefit Program of the State Teachers' Retirement Plan except employees of a public agency having any employees in positions covered by that system who are also in positions covered by a local retirement system for the retirement of teachers, or for membership in which public school teachers are eligible, operated by a city, city and county, county or other public agency or combination of public agencies of the state.

(e) The Legislators' Retirement System with respect to all employees in positions covered by that system.

(f) The Judges' Retirement System with respect to all employees in positions covered by that system.

(g) The University of California Retirement System only with respect to all employees in positions covered by that system.

(h) The San Francisco City and County Employees' Retirement System with respect to all employees in positions covered by that system.

(i) Any other retirement system with respect only to employees of any two or more of the public agencies having employees in positions covered by that system, as designated by the board and with regard to which the board authorizes conduct of a referendum.

(j) Any retirement system with respect only to employees of a hospital that is an integral part of a city incorporated between January 15, 1898 and July 15, 1898 in positions covered by the system, as designated by the board on request of the city.

(k) Except as otherwise provided in subdivisions (b) to (j), inclusive, any retirement system with respect to employees of each of the public agencies having employees in positions covered by the system.

(*l*) Each division or part of a retirement system, as defined in subdivisions (a), (b), (c), (e), (g), (h), (i), (j), (k), and (m) of this section, which is divided pursuant to this chapter into two parts:

(1) The part composed of the positions of members of the system who desire coverage under the federal system.

(2) The part composed of the positions of members of the system who do not desire coverage under the federal system.

(m) The State Teachers' Retirement System with respect to all employees of each public agency, as defined by Section 22009.03, in positions covered by the State Teachers' Retirement Plan. This subdivision shall become inoperative on July 1, 2004.

SEC. 30. Section 22013.7 of the Government Code is amended to read:

22013.7. ''Policeman'' or ''fireman,'' as used in this part, also includes persons employed in positions set forth in Sections 20414 and 20423.5 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 31. Section 22013.78 of the Government Code is amended to read:

22013.78. ''Policeman'' as used in this part also includes persons currently employed in classifications listed in Sections 20401.5, 20423.6, 31469.2, 45311, and 53217.6 for purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 32. Section 22018 of the Government Code is amended to read:

22018. (a) It is the intent of the Legislature that, to the extent possible, members of the State Teachers' Retirement Plan earn credit towards Medicare coverage.

(b) In accomplishing the goal specified in subdivision (a), the board shall make available to school districts, community college districts, and county superintendents of schools information concerning the procedure for earning credit for social security coverage for school related service not credited under the Teachers' Retirement Law.

SEC. 33. Section 22156 of the Government Code is amended to read:

22156. (a) A division of the State Teachers' Retirement Plan is hereby authorized by the Legislature to provide Medicare coverage for employees of a public agency as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers' Retirement Plan on whose behalf a request is made pursuant to subdivision (a), may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations if (1) the member was employed in a position covered by the plan on March 31, 1986, and (2) the member has not since been mandated into Medicare coverage due to the enactment of Public Law 99-272, and (3) the member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall, immediately after the elections authorized in subdivision (b) have been made, make application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive a maximum of five years but not earlier than January 1, 1987.

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

SEC. 34. Section 22216 of the Government Code is repealed.

SEC. 35. Section 22502 of the Government Code is amended to read:

22502. Agreements as defined in Section 22006, and all applications and agreements and contracts and any amendments thereto between the board and the Adjutant General, the Teachers' Retirement Board, the Regents of the University of California, and any public agency, except the state, executed by the board pursuant to this part are

hereby excepted from the provisions of Section 13370, and of any other statutory provision that would otherwise require the approval of any of those agreements and contracts and any amendments thereto by any other state officer or agency.

SEC. 36. Section 22754 of the Government Code is amended to read:

22754. As used in this part, the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) ''Board'' means the Board of Administration of the Public Employees' Retirement System.

(b) ''Employee'' means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement Plan employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular, or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Any officer or employee of a contracting agency as defined in paragraph (3) of subdivision (g) that has elected to become subject to this part, except persons who are determined to be ineligible.

(c) ''Carrier'' means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, a nonprofit

membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) ''Health benefits plan'' means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) ''Annuitant'' means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21547 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) or (3) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) ''Family member'' means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) ''Contracting agency'' means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with

Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds and a trial court as defined in the Trial Court Employment Protections and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).

(3) The protection and advocacy agency described in subdivision (h) of Section 4900 of the Welfare and Institutions Code, if the agency obtains a written advisory opinion from the United States Department of Labor stating that the organization is an agency or instrumentality of the state or a political subdivision thereof within the meaning of Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.

(h) ''Employer'' means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) ''Special district'' means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 37. Section 22817.5 is added to the Government Code, to read:

22817.5. Notwithstanding any other provision of this part, a former Member of the Legislature who has served six or more years as a Member of the Legislature may elect, within 60 days after permanent separation from state service, to enroll or continue his or her enrollment in a health benefits plan and dental care plan provided to annuitants. Upon that election, the former Member shall pay the total premiums related to that coverage and an additional 2 percent thereof for the administrative costs incurred by the board and the Department of Personnel Administration in administering this section. The health and dental benefits shall be provided without discrimination as to premium rates or benefits coverage. A person who subsequently terminates his or her coverage under this section may not reenroll pursuant to this section.

SEC. 38. Section 22825 of the Government Code is amended to read:

22825. (a) The employer and each employee or annuitant shall contribute a portion of the cost of providing for each employee and annuitant the benefit coverage afforded under any health benefit plan that the board has approved or for which it has executed a contract pursuant to this part, and in which the employee or annuitant may be enrolled.

(b) The employer's contribution for each employee or annuitant shall be the amount necessary to pay the cost of his or her enrollment, including the enrollment of his or her family members, in a health benefits plan or plans, or, if less, as follows:

(1) Prior to January 1, 2004, sixteen dollars ($16) per month.

(2) During calendar year 2004, thirty-two dollars and twenty cents ($32.20) per month.

(3) During calendar year 2005, forty-eight dollars and forty cents ($48.40) per month.

(4) During calendar year 2006, sixty-four dollars and sixty cents ($64.60) per month.

(5) During calendar year 2007, eighty dollars and eighty cents ($80.80) per month.

(6) During calendar year 2008, ninety-seven dollars ($97) per month.

Commencing January 1, 2009, the employer's contribution shall be adjusted annually by the board to reflect any change in the medical care component of the Consumer Price Index and shall be rounded to the nearest dollar. There shall be only one contribution with respect to all annuitants receiving allowances as survivors of the same employee or annuitant.

(c) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 39. Section 1.5 of this bill incorporates amendments to Section 20057 of the Government Code proposed by this bill and AB 1498. 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 20057 of the Government Code, and (3) this bill is enacted after AB 1498, in which case Section 20057 of the Government Code, as amended by AB 1498, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 520

An act to amend Sections 31452, 31510.2, 31529.9, 31597, 31597.1, 31899, 31899.1, and 31899.2 of, to amend the heading of Chapter 3.9 (commencing with Section 31899) of Part 3 of Division 4 of Title 3 of, to amend and renumber Sections 31899.7, 31899.8, 31899.9, and 31899.10 of, to amend, renumber, and add Section 31899.4 of, to add

Section 31603 to, to repeal Section 31899.6 of, and to repeal and add Section 31899.5 of, the Government Code, relating to county employees' retirement systems.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 31452 of the Government Code is amended to read:

31452. The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district. They are not subject to execution or any other process of court whatsoever except to the extent permitted by Section 31603 of this code and Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

SEC. 2. Section 31510.2 of the Government Code is amended to read:

31510.2. (a) The board of supervisors of any county subject to this article shall establish two defined contribution retirement plans authorized by Section 401 of the Internal Revenue Code of 1986. The terms of the plans shall be mutually agreed to by the employer and employee representatives of affected employees prior to adoption or amendment by the board of supervisors. The plans shall be known as General Plan F and Safety Plan F and are referred to collectively as plan F.

(b) Any general member described in subdivision (f) of Section 31510 shall participate in General Plan F, and any safety member described in subdivision (f) of Section 31510 shall participate in Safety Plan F, after commencement of his or her participation in the prior plan.

(c) The board, upon the advice of the actuary, shall determine the portion of the member contributions otherwise required under the prior plan that shall be credited to plan F in lieu of being credited to the other plan. In doing so, the board shall provide for the level of contributions to plan F that is the minimum amount sufficient to satisfy the purposes set forth in subdivision (b) of Section 31510.

(d) The right of the member to benefits derived from member contributions vests under plan F upon the commencement of participation in plan F.

(e) If a member or beneficiary becomes entitled to receive a benefit in the form of an annuity under the terms of the prior plan, the member's account in plan F shall be converted to the same form of annuity as is payable to the member or beneficiary from the prior plan. The amount of the annuity payable under the prior plan, calculated prior to the application of this article (including the limitations set forth in Section 415 of the Internal Revenue Code of 1986), shall be reduced by the amount of the annuity generated under plan F as described in the preceding sentence. The amount payable from plan F shall be paid at the same time and in the same manner as the annuity payable from the prior plan and may be provided through an annuity contract purchased from an insurance company, at the discretion of the board. Notwithstanding the foregoing, if the member's account in plan F does not exceed three thousand five hundred dollars ($3,500), it shall be paid to the member or beneficiary as a lump-sum payment, in lieu of the benefit otherwise payable under plan F.

(f) If a member or beneficiary becomes entitled to receive the member's accumulated contributions and interest from the prior plan, the member or beneficiary shall receive the member's account balance from plan F consisting of the member's accumulated contributions and actual earnings at the same time and in the same manner.

(g) In applying the limitations set forth in Section 415 of the Internal Revenue Code of 1986, benefits or annual additions in qualified retirement plans maintained by an employer separate from the retirement system shall be reduced first. Any additional reduction shall be made to the benefits from plans within the retirement system other than plan F, and then lastly to the annual addition to plan F.

(h) Plan F shall be administered in accordance with subsection (a) of Section 401 of the Internal Revenue Code of 1986 and the Treasury Regulations issued thereunder. The plan shall state that it is intended to be a profit-sharing plan wherein contributions are determined without regard to current or accumulated profits.

(i) For the purpose of this article, the term ''annuity'' means the combined benefit provided by an annuity, as defined in Section 31457, and the pension, as defined in Section 31471.

(j) To the extent any county subject to this article terminates General Plan F or Safety Plan F, or both of them, with respect to any group of members and in accordance with their terms and adopts a replacement benefits program under Section 31899.4 for those members in lieu of that plan or plans, this section shall be inoperative in that county with respect to those members. In any event, the election made pursuant to subdivision (b) of Section 31510, the provisions of subdivisions (c), (d), (e), (f), and (h) of Section 31510, and the provisions of Section 31510.3 shall remain operative in that county.

SEC. 3. Section 31529.9 of the Government Code is amended to read:

31529.9. (a) In addition to the powers granted by Sections 31529, 31529.5, 31614, and 31732, the board of retirement and the board of investment may contract with the county counsel or with attorneys in private practice or employ staff attorneys for legal services.

(b) Notwithstanding Sections 31529.5 and 31580, the board shall pay, from system assets, reasonable compensation for the legal services.

(c) This section applies to any county of the 2nd class, 7th class, 14th class, 15th class, or the 16th class as described by Sections 28020, 28023, 28028, 28035, 28036, and 28037.

(d) This section shall also apply to any other county if the board of retirement, by resolution adopted by majority vote, makes this section applicable in the county.

SEC. 4. Section 31597 of the Government Code is amended to read:

31597. Before June 30th of each year the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding December 31st and its financial transactions for the year ending on that day.

SEC. 5. Section 31597.1 of the Government Code is amended to read:

31597.1. Before December 31 of each year, the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding June 30th and its financial transactions for the fiscal year ending that day.

This section is not operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county. After the filing of the first fiscal year accounting under this section, the provisions of Section 31597 do not apply in the county.

SEC. 6. Section 31603 is added to the Government Code, to read:

31603. The board of retirement or the board of investments, as applicable, may obtain a loan and pledge a portion of the assets of the retirement fund as security for the repayment of the loan if the board finds all of the following:

(a) An emergency exists affecting the national banking system or financial markets.

(b) The emergency prevents the association from readily accessing its funds.

(c) The loan is necessary to promptly deliver benefits when due.

The assets of the retirement fund pledged as security for the loan shall be subject to execution and other processes of the court only in

connection with a proceeding to enforce the loan. The costs associated with securing and repaying the loan, including interest, shall be a charge against investment earnings of the fund.

SEC. 7. The heading of Chapter 3.9 (commencing with Section 31899) of Part 3 of Division 4 of Title 3 of the Government Code is amended to read:

CHAPTER 3.9. INTERNAL REVENUE CODE COUNTY COMPLIANCE AND REPLACEMENT BENEFITS PROGRAM

SEC. 8. Section 31899 of the Government Code is amended to read:

31899. The purpose of this chapter is to ensure the federal tax-exempt status of the county employees' retirement systems, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code.

To achieve this purpose, this chapter incorporates certain pension payment limitations and elects the ''grandfather'' option in Section 415(b)(10) of the Internal Revenue Code. Also, this chapter provides for certain replacement benefits.

SEC. 9. Section 31899.1 of the Government Code is amended to read:

31899.1. (a) The definitions in Chapter 3 (commencing with Section 31450) of this part shall apply to this chapter.

(b) The term ''Internal Revenue Code'' includes all regulations, revenue rulings, notices, and revenue procedures issued by the Internal Revenue Service.

SEC. 10. Section 31899.2 of the Government Code is amended to read:

31899.2. (a) In accordance with Section 31899.3, the retirement benefits for any person who for the first time became a member of the system on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code. The retirement benefits for any person who became a member of the system before January 1, 1990, also shall be subject to the payment limitations of Section 415 of the Internal Revenue Code to the extent that those benefits are not exempt from those limitations under the ''grandfather'' election that has been made under that section and this section.

(b) The ''grandfather'' election in Section 415(b)(10) of the Internal Revenue Code is hereby made. All members of a retirement system who

joined the system prior to January 1, 1990, are exempt from the Section 415 limits to the extent permitted by the Internal Revenue Code.

(c) This section does not apply in a county of the first class as defined in 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, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

SEC. 11. Section 31899.4 of the Government Code is amended and renumbered to read:

31899.3. (a) Notwithstanding any other provision of law, the retirement rights conferred by this chapter and by Chapter 3 (commencing with Section 31450) of this part upon any person who for the first time becomes a member of a retirement system on or after January 1, 1990, shall be subject to the limitations in the Internal Revenue Code upon benefits that may be paid by public retirement systems. That person may not have any retirement right or benefit that exceeds those limitations, and no retirement right or benefit may accrue to or vest in that person under Chapter 3 (commencing with Section 31450) that exceeds those limitations. That person may, however, have retirement rights and benefits under the replacement benefits program established under this chapter.

(b) Each retirement board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution, prior to employment, to each person who may become a member and to each person who for the first time becomes a member on or after January 1, 1990.

(c) Chapter 3 (commencing with Section 31450) shall be construed as if it included this section.

(d) This section does not apply in a county of the first class as defined in 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, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

SEC. 12. Section 31899.4 is added to the Government Code, to read:

31899.4. (a) Each county and district shall provide a program to replace the benefits that are limited by Section 415 of the Internal Revenue Code for members whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Section 31538. The replacement benefits program shall provide benefits that, together with the benefits provided by the retirement system, are the same as, and may not exceed, the benefits that would be paid by the retirement system but for the application of the limits of Section 415. Notwithstanding the foregoing, the county or district may modify its replacement benefits program and may add, modify, or eliminate any replacement benefits, as

necessary, to carry out the purpose of this chapter. A replacement benefit may not be reduced if the reduction would impair the vested rights of any person.

(b) Each county shall establish and administer its own replacement benefits program for members whose retirement benefits are limited by Section 415 of the Internal Revenue Code.

(c) A county may, pursuant to a contract with a district, agree to administer the district's replacement benefits program for the district's members whose retirement benefits are limited by Section 415 of the Internal Revenue Code. The county may charge each district a reasonable fee for administering the district's program and the county and district may agree on any other conditions relating to that administration. If a district does not contract with the county to administer its replacement benefits program, it shall establish and administer its own replacement benefits program.

(d) Upon the recommendation of the retirement system's actuary, and in accordance with its obligation to recommend county and district contribution rates under Sections 31453 and 31453.5, the board shall adjust the contributions required to be made by a county or district to the extent that benefits are payable under a replacement benefits program of that county or district.

(e) The county, and any district that establishes and administers its own program, shall enact an ordinance or prescribe regulations or other written documentation setting forth the terms of its replacement benefits program.

(f) Notwithstanding any other provision of this chapter, a county of the first class, as defined in 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, is not required to provide replacement benefits to any member under this section if that member participates in General Plan F or Safety Plan F under Article 2.1 (commencing with Section 31510) of Chapter 3.

SEC. 13. Section 31899.5 of the Government Code is repealed.

SEC. 14. Section 31899.5 is added to the Government Code, to read:

31899.5. Each county, and each district that establishes its own replacement benefits program, shall administer the replacement benefits program established by it pursuant to this chapter. The board may, pursuant to an agreement with the county or the district that establishes its own program, assist in the administration of the replacement benefits program to the extent permitted under the Internal Revenue Code.

SEC. 15. Section 31899.6 of the Government Code is repealed.

SEC. 16. Section 31899.7 of the Government Code is amended and renumbered to read:

31899.6. If the Internal Revenue Service determines that any provision of Chapter 3 (commencing with Section 31450) of this part or this chapter cannot be given effect without placing a retirement system administered under this chapter or Chapter 3 (commencing with Section 31450) of this part out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties shall become inoperative with respect to the payment of benefits pursuant to Chapter 3 (commencing with Section 31450) of this part, as of the effective date of the determination. The retirement board shall notify the Secretary of State of inoperation under this section.

SEC. 17. Section 31899.8 of the Government Code is amended and renumbered to read:

31899.7. (a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this chapter, except this section, shall become inoperative as of the effective date of that amendment or decision. The retirement board shall immediately notify the Secretary of State whenever any provision of this chapter becomes inoperative pursuant to this section.

(b) Whenever all sections of this chapter, except this section, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the retirement board, county, and districts shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 of the Internal Revenue Code for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and pay benefits that are due under the system to the affected annuitants without regard to any limitations of Section 415 of the Internal Revenue Code.

(3) Take any and all other actions they deem necessary and feasible.

SEC. 18. Section 31899.9 of the Government Code is amended and renumbered to read:

31899.8. It is the sole intent of the Legislature, in enacting this chapter, to fully comply with the provisions of the Internal Revenue Code that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems, to elect the ''grandfather'' option in Section 415(b)(10) of the Internal Revenue Code, and to require that each county and district provide benefits that replace the benefits that are limited by Section 415 of the Internal Revenue Code for affected members of the county employees' retirement systems.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in City of Sacramento v. State of California (50 Cal. 3d 51).

It is the intent of the Legislature that this chapter not be construed to impose upon local public agencies that are maintaining county retirement systems pursuant to Chapter 3 (commencing with Section 31450) of this part, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2.

If either the Commission on State Mandates or a court determines that this chapter imposes upon any local agency, state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 or from any other state fund.

SEC. 19. Section 31899.10 of the Government Code is amended and renumbered to read:

31899.9. The Legislature reserves the power and right to amend this chapter, as needed to effect its purposes. This chapter shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

CHAPTER 521

An act to amend Section 27315 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 27315 of the Vehicle Code is amended to read:

27315. (a) The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the

use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.

(b) This section shall be known and may be cited as the Motor Vehicle Safety Act.

(c) (1) As used in this section, ''motor vehicle'' means any passenger vehicle or any motortruck or truck tractor, but does not include a motorcycle.

(2) Until May 1, 2000, for purposes of this section, a ''motor vehicle'' also means any farm labor vehicle that was first issued an inspection certificate under Section 31401 on or after October 1, 1999.

(3) On and after May 1, 2000, for purposes of this section, a ''motor vehicle'' also means any farm labor vehicle, regardless of date of certification under Section 31401.

(d) (1) A person may not operate a motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt. This paragraph does not apply to the operator of a taxicab, as defined in Section 27908, when the taxicab is driven on a city street and is engaged in the transportation of a fare-paying passenger. The safety belt requirement established by this paragraph is the minimum safety standard applicable to employees being transported in a motor vehicle. This paragraph does not preempt any more stringent or restrictive standards imposed by the Labor Code or any other state or federal regulation regarding the transportation of employees in a motor vehicle.

(2) The operator of a limousine for hire or the operator of an authorized emergency vehicle, as defined in subdivision (a) of Section 165, may not operate the limousine for hire or authorized emergency vehicle unless the operator and any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(3) The operator of a taxicab may not operate the taxicab unless any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(e) A person 16 years of age or over may not be a passenger in a motor vehicle on a highway unless that person is properly restrained by a safety belt. This subdivision does not apply to a passenger in a sleeper berth, as defined in subdivision (v) of Section 1201 of Title 13 of the California Code of Regulations.

(f) Every owner of a motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire,

operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition which would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a public employee, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to any passenger in any seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the public employee, unless required by the agency employing the public employee.

(h) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (d), (e), or (f) is an infraction punishable by a fine of not more than twenty dollars ($20) for a first offense, and a fine of not more than fifty dollars ($50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or a driving school in which the proper use of safety belts is demonstrated.

(i) In a civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(j) If the United States Secretary of Transportation fails to adopt safety standards for manual safety belt systems by September 1, 1989, no motor vehicle manufactured after that date for sale or sold in this state shall be registered unless it contains a manual safety belt system which meets the performance standards applicable to automatic crash protection devices adopted by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

(k) Each motor vehicle offered for original sale in this state which has been manufactured on or after September 1, 1989, shall comply with the automatic restraint requirements of Section S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208), as published in

Volume 49 of the Federal Register, No. 138, page 29009. Any automobile manufacturer who sells or delivers a motor vehicle subject to the requirements of this subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars ($500) for each sale or delivery of a noncomplying motor vehicle.

(*l*) Compliance with subdivision (j) or (k) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

(m) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

(n) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

(o) This section does not apply to a driver actually engaged in the collection of solid waste or recyclable materials along that driver's collection route if the driver is properly restrained by a safety belt prior to commencing and subsequent to completing the collection route.

(p) Subdivisions (d), (e), (f), (g), and (h) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

CHAPTER 522

An act relating to public lands.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The land formerly comprising General Bidwell State Park and granted by the state to Butte County, including a portion subsequently

granted by Butte County to the City of Chico, has historically functioned and now functions as a natural floodway known as Lindo Channel.

(b) Owners of certain private lands adjoining the channel will suffer hardship if the interests of the City of Chico in the channel, as established in current law, are strictly enforced as to structures or uses on those private lands that abut or encroach onto Lindo Channel.

(c) It is the intent of the Legislature to authorize the City of Chico to sell, convey, or exchange portions of Lindo Channel under certain circumstances and free of conditions, restrictions, or limitations imposed under the statutes granting the channel to the county and authorizing the grant of the channel to the city.

SEC. 2. (a) The City of Chico may sell, convey, or exchange at fair market value, all of the right, title, and interest held by the city in the land known as Lindo Channel, granted to the County of Butte and its successors by Chapter 73 of the Statutes of 1950, First Extraordinary Session, and to the city by the county under Chapter 128 of the Statutes of 1986, if both of the following occur:

(1) The owner of land adjoining the channel and the city manager and city attorney of the City of Chico agree that one or more of the following circumstances exist on that land and that the sale, conveyance, or exchange is the best manner in which to resolve the matter:

(A) An existing building or other improvement abuts or encroaches onto the channel, and that building or improvement was constructed or installed in good faith, without the purpose of utilizing channel land for private benefit, and removal or relocation of the building or improvement would impose an unreasonable burden on the owner, and access to the private land adjoining the channel by way of passage over channel property is necessary for, or convenient to, the safe use of the land.

(B) An existing building or other improvement encroaches onto the channel, and that building or improvement was constructed or installed in good faith, without the purpose of utilizing channel land for private benefit, and removal or relocation of the building or improvement would impose an unreasonable burden on the owner, and the sale, conveyance, or exchange will not reduce or eliminate public access to the channel at any point designated by the city for that access.

(2) The City Council of Chico, by resolution adopted by the affirmative vote of at least five members of the city council, authorizes the sale, conveyance, or exchange. Before the vote, the Bidwell Park and Playground Commission may review each proposal to sell, convey, or exchange the land and submit written comments to the city council for its consideration.

(b) (1) The amount of land sold or conveyed to the owner of land adjoining Lindo Channel pursuant to subdivision (a) may not exceed the

amount necessary to reasonably alleviate the hardship to the owner resulting from the building or improvement abutting or encroaching onto the channel.

(2) The proceeds of a sale or conveyance of land pursuant to subdivision (a) shall be deposited into the city's park fund.

(c) The amount of land exchanged by the city pursuant to subdivision (a) may include land to which there is no reasonable public access, provided the land received by the city is of equal or greater fair market value to that exchanged.

(d) Land sold, conveyed, or exchanged by the City of Chico pursuant to subdivision (a) shall thereafter be:

(1) Free of all conditions, restrictions, and limitations imposed upon the County of Butte and its successors by Chapter 73 of the Statutes of 1950, First Extraordinary Session, and upon the city and its successors under Chapter 128 of the Statutes of 1986.

(2) Deemed to be merged with and part of the adjoining land of the owner who received it.

(e) It is the intent of the Legislature that any sale, conveyance, or exchange pursuant to this section be in accordance with the conditions, restrictions, and limitations contained in the indenture described in Section 1 of Chapter 73 of the Statutes of 1950, First Extraordinary Session, whereby said lands were conveyed to the state. If it is determined by a court of competent jurisdiction that the sale, conveyance, or exchange pursuant to this section would constitute a breach of that indenture, then the provisions of this section shall be inoperative and ineffective as a transfer of title or right of possession as of the effective date of the act enacting this section.

CHAPTER 523

An act to amend Sections 8278.3, 54745, and 54749 of the Education Code, relating to child care funding.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the renovation, repair, or improvement of an existing building to make the building

suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever amount is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, are continuously appropriated, without regard to fiscal years, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before August 1 of each fiscal year, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies that received funding from the Child Care Facilities Revolving Fund, the increased capacity that these facilities generated, a description of the manner in which the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

(c) A school district or county office of education that provides child care pursuant to the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29) is eligible to apply for and receive funding pursuant to this section.

SEC. 2. Section 54745 of the Education Code is amended to read:

54745. (a) In the administration of the Cal-SAFE program, the following provisions apply:

(1) Participation by a school district or county superintendent of schools in the Cal-SAFE program is voluntary.

(2) The governing board of a school district or county superintendent of schools may submit an application to the State Department of Education in the manner, form, and by the date specified by the department to establish and maintain a Cal-SAFE program.

(3) A school district or county superintendent of schools approved to implement the Cal-SAFE program shall be funded as one program to be operated at one or multiple sites depending upon the need within the service area.

(4) Notwithstanding any other law, a school district or county superintendent of schools operating, by October 1, 1999, a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 and Section 2551.3, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559, as those provisions existed prior to January 1, 1999, or any combination thereof, that chooses to participate in the Cal-SAFE program shall have priority for Cal-SAFE program funding for an amount up to the dollar amount provided to each school district or county superintendent of schools under those provisions in the fiscal year prior to participation in the Cal-SAFE program, provided that an application is submitted and approved.

(5) If a school district or county superintendent of schools operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof, chooses not to participate in the Cal-SAFE program, it is the intent of the Legislature that the funding it would have received for the operation of those programs shall be redirected to the Cal-SAFE program and the school district or county superintendent of schools may apply in a subsequent school year to operate a Cal-SAFE program.

(6) A school district or county superintendent of schools that terminates its Cal-SAFE program may reapply to establish a Cal-SAFE program.

(7) In order to continue implementation of the Cal-SAFE program beyond the initial three years of funding, each funded agency shall be reviewed by the department to determine progress towards achieving the goals set forth in Section 54742. Thereafter, funded agencies shall be reviewed and reauthorized every five years based upon a process determined by the department to continue implementation of a Cal-SAFE program.

(b) All of the following requirements apply to an application for the Cal-SAFE program:

(1) The governing board of a participating local education agency shall adopt a policy or resolution declaring its commitment to provide a comprehensive, continuous, community-linked program for expectant and parenting pupils and their children that reflects the cultural and linguistic diversity of the community.

(2) The local education agency shall provide assurance for participation in the development of the County Service Coordination Plan as described in Section 54744.

(3) A school district or county superintendent of schools shall agree to participate in the data collection and evaluation of the Cal-SAFE program.

(c) To implement a Cal-SAFE program, the funded school district, or county superintendent of schools shall meet all of the following criteria:

(1) Be in compliance with the regulations adopted pursuant to Title IX of the Education Amendments of 1972.

(2) Ensure that enrolled pupils retain their right to participate in any comprehensive school or educational alternative programs in which they could otherwise enroll. School placement and instructional strategies shall be based upon the needs and styles of learning of the individual pupils. The classroom setting shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the individual parent, child, or both.

(3) Enroll pupils into the Cal-SAFE program on an open entry and open exit basis.

(4) Provide a quality education program to pupils in a supportive and accommodating learning environment with appropriate classroom strategies to ensure school access and academic credit for all work completed.

(5) Provide parenting education and life skills instruction to enrolled pupils.

(6) Make maximum utilization of available programs and facilities to serve expectant and parenting pupils and their children.

(7) Provide a quality child care and development program for the children of enrolled teen parents located on or near the schoolsite.

(8) Make maximum utilization of its local school food service program.

(9) Provide special school nutrition supplements, as defined by subdivision (b) of Section 49553, to pregnant and lactating pupils.

(10) Enter into formal partnership agreements, as necessary, with community-based organizations and other governmental agencies to assist pupils in accessing support services or to provide child care and development services.

(11) Provide staff development and community outreach in order to establish a positive learning environment and school policies supportive of expectant and parenting pupils' academic achievement and to promote the healthy development of their children.

(12) Maintain an annual program budget and expenditure report to document that funds are expended pursuant to Section 54749.

(13) Assess no fees to enrolled pupils or their families for services provided through the Cal-SAFE program.

(14) Establish and maintain a database in the manner and form prescribed by the State Department of Education for purposes of program evaluation.

(15) Coordinate to the maximum extent possible with Cal-Learn program case managers provided pursuant to Section 11332.5 of the Welfare and Institutions Code and Adolescent Family Life Program case managers provided pursuant to Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code.

SEC. 3. Section 54749 of the Education Code is amended to read:

54749. (a) For the 2000–01 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools participating in Cal-SAFE is eligible for state funding from funds appropriated for services provided for the purposes of the program as follows:

(1) A support services allowance of two thousand two hundred thirty-seven dollars ($2,237) for each unit of average daily attendance generated by each pupil who has completed the intake process pursuant to subdivision (a) of Section 54746 and is receiving services pursuant to subdivision (b) of Section 54746. This allowance shall be adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1. In no event shall more than one support service allowance be generated by any pupil concurrently enrolled in more than one educational program.

(A) A support services allowance may not be claimed for units of average daily attendance reported pursuant to the following:

(i) Subdivision (b) of Section 1982 for pupils attending county community schools operated pursuant to Chapter 6.5 of Part 2 (commencing with Section 1980).

(ii) Pupils attending juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(iii) Pupils attending community day schools operated pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(iv) Pupils attending a county operated Cal-SAFE program pursuant to this article whose attendance is reported pursuant to Section 2551.3.

(B) A support services allowance may not be used to supplant average daily attendance and revenue limit funding provided pursuant to paragraph (2) for the support of educational programs that Cal-SAFE program pupils attend.

(2) Average daily attendance and revenue limit funding for pupils receiving services in the Cal-SAFE program shall be computed pursuant

to provisions and regulations applicable to the educational program or programs that each pupil attends, except as provided in paragraph (3).

(3) For attendance not claimed pursuant to paragraph (2), a county office of education may claim the statewide average revenue limit per unit of average daily attendance for high school districts, payable from Section A of the State School Fund, for the attendance of pupils receiving services in the Cal-SAFE program, provided that no other revenue limit funding is claimed for the same pupil and pupil attendance of no less than 240 minutes per day and is computed and maintained pursuant to Section 46300.

(4) Except as provided in subdivision (c) of Section 54749.5, operators of Cal-SAFE programs shall be reimbursed in accordance with the amount specified in subdivision (b) of Section 8265 and the amounts specified in subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program. To be eligible for funding pursuant to this paragraph, the operational days of child care and development programs are only those necessary to provide child care services to children of pupils participating in Cal-SAFE.

(5) Notwithstanding paragraph (1), pupils for whom attendance is reported pursuant to subdivision (b) of Section 1982, pupils attending juvenile court schools, and pupils attending community day schools may complete the intake process for the Cal-SAFE program and, if the intake process is completed, shall receive services pursuant to subdivision (b) of Section 54746. The children of pupils receiving services in the Cal-SAFE program pursuant to subdivision (b) of Section 54746 and attending juvenile court schools, county community schools, or community day schools are eligible for funding pursuant to paragraph (4) and no other provisions of this section.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide the supportive services enumerated in subdivision (b) of Section 54746, to provide in-service training as specified in subdivision (d) of Section 54746, and for the expenditures enumerated in subdivision (d) of this section.

(c) Funds allocated pursuant to paragraph (4) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal-SAFE program for the purpose of promoting the children's development comparable to age norms, access to health and preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3, subdivision (b) of Section 54749.5, and this section shall be maintained in a separate account and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

(1) Expenditures defined as direct costs of instructional programs.

(2) Expenditures defined as documented direct support costs.

(3) Expenditures defined as allocated direct support costs.

(4) Expenditures for indirect charges.

(5) Expenditures defined as facility costs, including the costs of renting, leasing, lease purchase, remodeling, or improving buildings.

(e) Indirect costs may not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the operation of a Cal-SAFE program shall be included in the Cal-SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools is subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space where the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal-SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi-Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal-SAFE program in a summer school program or enrolled in a school program operating more than 180 days, eligibility for child care services pursuant to subdivision (c) of Section 54746 shall be determined by the parent's hours of enrollment and shall be for only those hours necessary to further the completion of the parent's educational program.

(j) To meet startup costs for the opening of child care and development sites, as defined in subdivision (ab) of Section 8208, and applicable regulations, a school district or county office of education may apply for a one-time 15-percent service level exemption within the amount appropriated in the annual Budget Act for the purposes of paragraph (4) of subdivision (a) for each site meeting the criteria set forth in subdivision (ab) of Section 8208. To the extent that Budget Act funding is insufficient to cover the full costs of Cal-SAFE child care,

reimbursements to all participating programs shall be reduced on a pro rata basis. A school district or county office of education shall submit claims pursuant to this subdivision with other claims submitted pursuant to this section. Funding provided for startup costs shall be utilized for approvable startup costs enumerated in subdivision (a) of Section 8275.

(k) To meet costs for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, a school district or county office of education that provides child care pursuant to this article may apply for and receive funding pursuant to Section 8278.3.

(*l*) Notwithstanding any other provision of this article, the implementation of this article is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the State Department of Education.

(m) Notwithstanding any other law, a charter school may apply for funding pursuant to this article and shall meet the requirements of this article to be eligible for funding pursuant to this section.

SEC. 4. Upon a determination by the Superintendent of Public Instruction that an overpayment of child care funds was made by the State Department of Education to the child care provider operating as C.O.P.E. Centro Familar, located in Santa Cruz County, the superintendent may enter into a repayment plan that permits the child care provider to repay the funds, plus interest, to the department over a period not to exceed five years.

SEC. 5. The Legislature finds and declares that due to the unique fiscal circumstances concerning C.O.P.E. Centro Familar, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 524

An act to amend, repeal, and add Section 27360 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 27360 of the Vehicle Code is amended to read:

27360. (a) A parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, may not permit his or her child or ward to be transported upon a highway in the motor vehicle without providing and properly securing the child or ward, in a child passenger restraint system meeting applicable federal motor vehicle safety standards unless the child or ward is at least one of the following:

(1) Six years of age or older.

(2) Weighs 60 pounds or more.

(b) A driver may not transport on a highway a child in a motor vehicle, as defined in Section 27315, without providing and properly securing the child in a child passenger restraint system meeting applicable federal motor vehicle safety standards unless the child is at least one of the following:

(1) Six years of age or older.

(2) Weighs 60 pounds or more.

This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) A first offense under this section is punishable by a fine of one hundred dollars ($100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(2) A second or subsequent offense under this section is punishable by a fine of two hundred fifty dollars ($250), no part of which may be waived by the court, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead refers the defendant to a community education program that includes, but is not

limited to, education on the proper installation and use of child passenger restraint systems for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(d) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to health departments of local jurisdictions where the violation occurred, to be used for a community education program that includes, but is not limited to, demonstration of the installation of a child passenger restraint system for children of all ages and also assists an economically disadvantaged family in obtaining a restraint system through a low-cost purchase or loan. The county or city health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the court system to facilitate the transfer of funds to the program. The county or city may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall attend an education program that includes demonstration of proper installation and use of a child passenger restraint system.

As the proceeds from fines become available, county or city health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county or city shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, county clinics, prenatal clinics, women, infants, and children programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county or city for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

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

SEC. 2. Section 27360 is added to the Vehicle Code, to read:

27360. (a) A parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, may not permit his or her child or ward to be transported upon a highway in the motor vehicle without providing and properly securing the child or ward, in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards unless the child or ward is at least one of the following:

(1) Six years of age or older.

(2) Weighs 60 pounds or more.

(b) A driver may not transport on a highway a child in a motor vehicle, as defined in Section 27315, without providing and properly securing the child in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards unless the child is at least one of the following:

(1) Six years of age or older.

(2) Weighs 60 pounds or more.

This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) For purposes of subdivisions (a) and (b), and except as provided in paragraph (2), a child or ward under the age of six years who weighs less than 60 pounds may ride in the front seat of a motor vehicle, if properly secured in a child passenger restraint system that meets applicable federal motor vehicle safety standards, under any of the following circumstances:

(A) There is no rear seat.

(B) The rear seats are side-facing jump seats.

(C) The rear seats are rear-facing seats.

(D) The child passenger restraint system cannot be installed properly in the rear seat.

(E) All rear seats are already occupied by children under the age of 12 years.

(F) Medical reasons necessitate that the child or ward not ride in the rear seat. The court may require satisfactory proof of the child's medical condition.

(2) A child or ward may not ride in the front seat of a motor vehicle with an active passenger air bag if the child or ward is one of the following:

(A) Under one year of age.

(B) Weighs less than 20 pounds.

(C) Riding in a rear-facing child passenger restraint system.

(d) (1) A first offense under this section is punishable by a fine of one hundred dollars ($100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(2) A second or subsequent offense under this section is punishable by a fine of two hundred fifty dollars ($250), no part of which may be waived by the court, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of child passenger restraint systems for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(e) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to health departments of local jurisdictions where the violation occurred, to be used for a community education program that includes, but is not limited to, demonstration of the installation of a child passenger restraint system for children of all ages and also assists an economically disadvantaged family in obtaining a restraint system through a low-cost purchase or loan. The county or city health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the court system to facilitate the transfer of funds to the program. The county or city may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall attend an education program that includes demonstration of proper installation and use of a child passenger restraint system.

As the proceeds from fines become available, county or city health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county or city shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, county clinics, prenatal clinics, women, infants, and children programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county or city for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

(f) This section shall become operative on January 1, 2005.

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 525

An act to amend Sections 8879.1, 14070.4, 14076.4, 14524.2, and 65082 of, and to repeal Sections 8879.17 and 14524.15 of, the Government Code, to amend Sections 21602, 21702, 21704, 21707, and 102015 of, and to repeal Section 21604 of, and Chapter 3.5 (commencing with Section 21501) of Division 9 of, the Public Utilities Code, and to amend Sections 72.1, 164.6, 188.5, 339, 354, 373, 390, 391, 407, 410, 411, 426, 460, and 820 of, and to repeal Sections 180.10, 391.1, 391.3, 401.1, 407.1, 411.5, and 509 of, the Streets and Highways Code, relating to transportation.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 8879.1 of the Government Code is amended to read:

8879.1. (a) The Legislature finds and declares that the completion of seismic safety retrofit work is essential to the welfare and economy of the state.

(b) It is the intent of the Legislature to ensure that the work be completed as quickly as possible.

(c) In order to avoid delays in the completion of the work, it is necessary that certain statutes that would otherwise be applicable be temporarily suspended.

SEC. 2. Section 8879.17 of the Government Code is repealed.

SEC. 3. Section 14070.4 of the Government Code is amended to read:

14070.4. (a) An interagency transfer agreement between the department and a joint powers board, when approved by the secretary, shall do all of the following:

(1) Specify the date and conditions for the transfer of responsibilities and identify the annual level of funding and ensure that the level of funding is consistent with and sufficient for the planned service improvements within the corridor.

(2) Identify, for the initial year and subsequent years, the funds to be transferred to the board including state operating subsidies made available for intercity rail services in the corridor, and funds currently used by the department for administration and marketing of the corridor, with the amounts adjusted annually for inflation and in accordance with the business plan.

(3) Specify the level of service to be provided, the respective responsibilities of the board and the department, the methods that the

department will use to assure the coordination of services with other rail passenger services in the state, and the methods that the department will use for the annual review of the business plan and annual proposals on funding and appropriations.

(4) Describe the terms for transferring to the joint exercise of powers agency car and locomotive train sets, and other equipment and property owned by the department and required for the intercity service in the corridor including, but not limited to, the number of units to be provided, liability coverage, maintenance and warranty responsibilities, and indemnification issues.

(5) Describe auditing responsibilities and process requirements, reimbursement and billing procedures, the responsibility for funding shortfalls, if any, during the course of each fiscal year, an operating contract oversight review process, performance standards and reporting procedures, the level of rail infrastructure maintenance, and other relevant monitoring procedures. The description shall contain an evaluation of the impact of any transfer of equipment on other intercity corridors. The agreement shall endeavor to minimize the impact and maximize the efficient use of the equipment, including continued joint use of equipment that is currently shared by one or more corridors.

(b) Use of the annual state funding allocation, as set forth in the interagency transfer agreement, shall be described in an annual business plan submitted by the board to the secretary for review and recommendation by April 1 of each year. The business plan, when approved by the secretary, shall be deemed accepted by the state. The budget proposal developed by the department for the subsequent year shall be based upon the business plan approved by the secretary. The business plan shall be consistent with the interagency agreement and shall include a report on the recent as well as historical performance of the corridor service, an overall operating plan including proposed service enhancement to increase ridership and provide for increased traveler demands in the corridor for the upcoming year, short-term and long-term capitol improvement programs, funding requirements for the upcoming fiscal year, and an action plan with specific performance goals and objectives. The business plan shall document service improvements to provide the planned level of service, inclusion of operating plans to serve peak period work trips, and consideration of other service expansions and enhancements. The plan shall clearly delineate how funding and accounting for state-sponsored rail passenger services shall be separate from locally sponsored services in the corridor. Proposals to expand or modify passenger services shall be accompanied by the identification of all associated costs and ridership projections. The business plan shall establish, among other things: fares, operating strategies, capital improvements needed, and marketing and operational

strategies designed to meet performance standards established in the interagency agreement.

(c) Based on the annual business plan and the subsequent appropriation by the Legislature, the secretary shall allocate state funds on an annual basis to the board. As provided in the interagency agreement, any additional funds that are required to operate the passenger rail service during the fiscal year shall be provided by the board from jurisdictions that receive service. In addition, the board may use any cost savings or farebox revenues to provide service improvements related to intercity service. In any event, the board shall report the fiscal results of the previous year's operations as part of the annual business plan.

(d) The level of service funded by the state shall in no case be less than the current number of intercity round trips operated in a corridor and serving the end points currently served by the intercity rail corridor. Subject to Section 14035.2, the level of service funded by the state shall also include feeder bus service with substantially the same number of route miles as the current feeder system, to be operated in conjunction with the trains. However, the interagency agreement shall not prohibit the joint powers board from reducing the number of feeder bus route miles if the joint powers board determines that a feeder bus route is not cost effective as provided in Section 14035.2.

(e) Nothing in this article shall be construed to preclude expansion of state-approved intercity rail service.

SEC. 4. Section 14076.4 of the Government Code is amended to read:

14076.4. If the board and the department enter into an interagency transfer agreement pursuant to Article 5 (commencing with Section 14070), for an initial period, that begins with the transfer of responsibilities from the department to the board and continues for a three-year period subsequent to the completion of the track and signal improvements between Sacramento and Emeryville, the San Francisco Bay Area Rapid Transit District General Manager and the district's administrative staff shall, if that district has appointed members to the board in accordance with Section 14076.2, provide all necessary administrative support to the board to perform its duties and responsibilities, and may perform for the board any and all activities that they are authorized to perform for the district. At the conclusion of the initial period, the board may, through procedures that it determines, select the San Francisco Bay Area Rapid Transit District or another existing public rail transit agency for one three-year term immediately following the initial period, and thereafter for five-year terms, to provide all necessary administrative support staff to the board to perform its duties and responsibilities.

SEC. 5. Section 14524.15 of the Government Code is repealed.

SEC. 6. Section 14524.2 of the Government Code is amended to read:

14524.2. (a) If the department's total project delivery plan for any year requires a permanent and temporary capital outlay support staffing level which equals the 1986–87 budgeted permanent and temporary capital outlay support staffing level, the department's budget request for that year shall contain a permanent and temporary capital outlay support staffing level equal to its 1986–87 authorized permanent and temporary capital outlay support staffing level.

(b) If the department's total project delivery plan for any year requires a permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services which exceed the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services, the department's budget request for that year shall contain a permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime equal to the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime plus one-half of the excess over the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services. The department may contract out, pursuant to Section 14131, an equal number of personnel year equivalents for each authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime which exceed the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime.

(c) For purposes of this section, ''permanent and temporary capital outlay support staffing level'' means the department's permanent and temporary capital outlay support staffing level funded by state and federal funds through the State Highway Account.

SEC. 7. Section 65082 of the Government Code is amended to read:

65082. (a) (1) A five-year regional transportation improvement program shall be prepared, adopted, and submitted to the California Transportation Commission on or before December 15 of each odd-numbered year thereafter, updated every two years, pursuant to Sections 65080 and 65080.5 and the guidelines adopted pursuant to Section 14530.1, to include regional transportation improvement projects and programs proposed to be funded, in whole or in part, in the state transportation improvement program.

(2) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and be

listed by relative priority, taking into account need, delivery milestone dates, and the availability of funding.

(b) Except for those counties that do not prepare a congestion management program pursuant to Section 65088.3, congestion management programs adopted pursuant to Section 65089 shall be incorporated into the regional transportation improvement program submitted to the commission by December 15 of each odd-numbered year.

(c) Local projects not included in a congestion management program shall not be included in the regional transportation improvement program. Projects and programs adopted pursuant to subdivision (a) shall be consistent with the capital improvement program adopted pursuant to paragraph (5) of subdivision (b) of Section 65089, and the guidelines adopted pursuant to Section 14530.1.

(d) Other projects may be included in the regional transportation improvement program if listed separately.

(e) Unless a county not containing urbanized areas of over 50,000 population notifies the Department of Transportation by July 1 that it intends to prepare a regional transportation improvement program for that county, the department shall, in consultation with the affected local agencies, prepare the program for all counties for which it prepares a regional transportation plan.

(f) The requirements for incorporating a congestion management program into a regional transportation improvement program specified in this section do not apply in those counties that do not prepare a congestion management program in accordance with Section 65088.3.

(g) The regional transportation improvement program may include a reserve of county shares for providing funds in order to match federal funds.

SEC. 8. Chapter 3.5 (commencing with Section 21501) of Division 9 of the Public Utilities Code is repealed.

SEC. 9. Section 21602 of the Public Utilities Code is amended to read:

21602. (a) Subject to the terms and within the limits of special appropriations made by the Legislature, the department may render financial assistance by grant or loan, or both, to political subdivisions jointly, in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled, by a political subdivision or subdivisions, if the financial assistance has been shown by public hearing to be appropriate to the proper development or maintenance of a statewide system of airports. Financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

(b) Notwithstanding subdivision (a) of Section 21681, a city or county designated by the Airport Land Use Commission is eligible to compete for funds held in the Aeronautics Account in the State Transportation Fund on behalf of any privately owned, public use airport that is included in an airport land use compatibility plan. However, the city or county shall be eligible to compete for the funds only when zoning on the parcel is tantamount to a taking of all reasonable uses that might otherwise be permitted on the parcel. The eligible airport and aviation purposes are limited to those specified in paragraphs (4), (5), (6), (9), and (14) of subdivision (f) of Section 21681, and, further, any capital improvements or acquisitions shall become the property of the designated city or county. Matching funds pursuant to subdivision (a) of Section 21684 may include the in-kind contribution of real property, with the approval of the department.

(c) Any grant of funds held in the Aeronautics Account in the State Transportation Fund on behalf of any privately owned airports shall contain a covenant that the airport remain open for public use for 20 years. Any grant made to a city or county on behalf of a privately owned airport shall contain a payback provision based upon existing market value at the time the private airport ceases to be open for public use.

(d) Upon request, California Aid to Airports Program (CAAP) projects included within the adopted Aeronautics Program, may be funded in advance of the year programmed, with the concurrence of the department, in order to better utilize funds in the account.

(e) There is, in the Aeronautics Account in the State Transportation Fund, a subaccount for the management of funds for loans to local entities pursuant to this chapter. All funds for airport loans in the Special Deposit Fund are hereby transferred to the subaccount. With the approval of the Department of Finance, the department shall deposit in the subaccount all money received by the department from repayments of and interest on existing and future airport loans, including, but not limited to, the sums of five hundred forty thousand dollars ($540,000) in repayments from the General Fund due in July 1987, and July 1988, and may, upon appropriation, transfer additional funds from the Aeronautics Account in the State Transportation Fund to the subaccount as the department deems appropriate. Interest on money in the subaccount shall be credited to the subaccount as it accrues.

(f) Notwithstanding Section 13340 of the Government Code, the money in the subaccount created by subdivision (e) is hereby continuously appropriated to the department without regard to fiscal years for purposes of loans to political subdivisions for airport purposes.

SEC. 10. Section 21604 of the Public Utilities Code is repealed.

SEC. 11. Section 21702 of the Public Utilities Code is amended to read:

21702. The California Aviation System Plan shall include, but not be limited to, all of the following elements:

(a) A background and introduction element, which summarizes aviation activity in California and establishes goals and objectives for aviation improvement.

(b) An air transportation issues element, which addresses issues such as aviation safety, airport noise, airport ground access, transportation systems management, airport financing, airport land use compatibility planning, and institutional relationships.

(c) A regional plan alternative element, which consists of the aviation elements of the regional transportation plans prepared by each transportation planning agency. This element shall include consideration of regional air transportation matters relating to growth, capacity needs, county activity, airport activity, and systemwide activity in order to evaluate adequately the overall impacts of regional activity in relation to the statewide air transportation system. This element shall propose general aviation and air carrier public use airports for consideration by the commission for funding eligibility under this chapter.

(d) A state plan alternative element, which includes consideration of statewide air transportation matters relating to growth, including, but not limited to, county activity, airport activity, and systemwide activity in order to evaluate adequately the state aviation system and to designate an adequate number of general aviation and air carrier public use airports for state funding in order to provide a level of air service and safety acceptable to the public.

(e) A comparative element, which compares and contrasts the regional plan alternative with the state plan alternative, including, but not limited to, airport noise, air quality, toxic waste cleanup, energy, economics, and passengers served.

(f) A 10-year capital improvement plan for each airport, based on each airport's adopted master plan if the airport has a master plan, approved by the applicable transportation planning agency, and submitted to the division for inclusion in the California Aviation System Plan.

(g) Any other element deemed appropriate by the division and the transportation planning agencies.

(h) A summary and conclusion element, which presents the findings and recommended course of action.

SEC. 12. Section 21704 of the Public Utilities Code is amended to read:

21704. The division, in consultation with the transportation planning agencies, shall biennially revise the capital improvement plan developed pursuant to subdivision (f) of Section 21702, and the division

shall submit the revised capital improvement plan to the commission. The division, in consultation with the transportation planning agencies, shall revise all other elements of the California Aviation System Plan every five years, and shall submit the revised system plan to the commission.

SEC. 13. Section 21707 of the Public Utilities Code is amended to read:

21707. Any funds necessary to carry out Sections 21701, 21702, and 21704 shall be obtained from federal grants, except for updates of the capital improvement plan and policy elements of the California Aviation System Plan, which may be funded from nonfederal sources.

SEC. 14. Section 102015 of the Public Utilities Code is amended to read:

102015. ''City'' means, individually, the Cities of Citrus Heights, Davis, Elk Grove, Folsom, Rancho Cordova, Roseville, Sacramento, and Woodland, and any other city which is annexed to the district as provided in this part.

SEC. 15. Section 72.1 of the Streets and Highways Code is amended to read:

72.1. (a) For purposes of this section, the following terms have the following meanings:

(1) ''Central Freeway Replacement Project'' is the department and city designated alternative transportation system to the damaged Central Freeway.

(2) ''City'' is the City and County of San Francisco.

(3) ''Freeway Project'' includes demolition of the existing commonly known Central Freeway, construction of a new freeway between Mission Street and Market Street, and construction of ramps to, and from, the new freeway.

(4) ''Octavia Street Project'' is the improvement of Octavia Street from Market Street north as a ground level boulevard.

(b) The Legislature finds and declares all of the following:

(1) That portion of Route 101 located in the city and commonly known as the Central Freeway was severely damaged in the 1989 Loma Prieta earthquake. This damage to the Central Freeway caused and continues to cause significant traffic congestion.

(2) Following the Loma Prieta earthquake, the department and the city, with substantial public involvement, selected the Central Freeway Replacement Project as an alternative transportation system to the damaged Central Freeway. The Central Freeway Replacement Project includes the Freeway Project consisting of the demolition of the existing Central Freeway, construction of a new freeway between Mission Street and Market Street, and the construction of ramps to, and from, the new freeway, and the Octavia Street Project, consisting of improvement of

Octavia Street from Market Street north as a ground level boulevard. The Central Freeway Replacement Project will remediate traffic congestion problems and allow the city to reclaim unnecessary rights-of-way for beneficial public uses.

(3) The implementation of an alternative transportation system is in the best interests of the people of the State of California.

(4) No portions of Route 101 north of Fell Street and south of Turk Street are needed for the Central Freeway Replacement Project or for the proposed alternative project to be placed before the voters as Proposition J in the general municipal election of November 1999.

(c) (1) The Legislature recognizes that the Central Freeway Replacement Project adopted by the city's voters, as local measure Proposition E in November 1998 qualifies for the statutory exemption under Section 180.2.

(2) The Legislature further recognizes that the proposed alternative project included in Proposition J also qualifies for the statutory exemption under Section 180.2.

(3) Notwithstanding paragraph (1), any development of property transferred to the city pursuant to this section may, to the extent required by applicable law, require subsequent environmental analysis by the city at the time at which the specific proposals for the use of that property are developed.

(d) That portion of Route 101 between Market Street and Turk Street is not a state highway, except that if the proposed alternative to the Octavia Street Project is approved by the voters in the general municipal election of November 1999, only that portion of Route 101 between Fell Street and Turk Street is not a state highway.

(e) The department shall retain jurisdiction over the portion of Route 101 that is between Mission Street and either Market Street or Fell Street, depending on which project is approved by the voters in the general municipal election of November 1999, and shall promptly transfer to the city any portion of Route 101 that is not a state highway under subdivision (d).

(f) The following shall apply if the voters do not approve the alternative project in the general municipal election of November 1999:

(1) The city shall utilize any proceeds from the disposition or use of excess rights-of-way for the purpose of designing, constructing, developing, and maintaining the Octavia Street Project until the city's share of the costs of that project are paid in full or funded from other sources. Upon the full funding of the city's share of the Octavia Street Project, the city shall utilize any remaining proceeds from the sale of excess rights-of-way solely for the transportation and related purposes authorized under Article XIX of the California Constitution.

(2) Upon notification to the department by the San Francisco County Transportation Authority that the city is prepared to implement an interim traffic management plan, the department shall proceed expeditiously with demolition of the portion of Route 101 between Fell and Mission Streets. The department shall design and construct the Freeway Project, and the city shall design and construct the Octavia Street Project, and each project shall be consistent with the Central Freeway Replacement Project.

SEC. 16. Section 164.6 of the Streets and Highways Code is amended to read:

164.6. (a) The department shall prepare a 10-year state rehabilitation plan for the rehabilitation and reconstruction, or the combination thereof, by the State Highway Operation and Protection Program, of all state highways and bridges owned by the state. The plan shall identify all rehabilitation needs for the 10-year period beginning on July 1, 1998, and ending on June 30, 2008, and shall include a schedule of improvements to complete all needed rehabilitation during the life of the plan not later than June 30, 2008. The plan shall be updated every two years beginning in 2000. The plan shall include specific milestones and quantifiable accomplishments, such as miles of highways to be repaved and number of bridges to be retrofitted. The plan shall contain strategies to control cost and improve the efficiency of the program, and include a cost estimate for at least the first five years of the program.

(b) The plan shall be submitted to the commission for review and comments not later than January 31 of each odd-numbered year, and shall be transmitted to the Governor and the Legislature not later than May 1 of each odd-numbered year.

(c) The plan shall be the basis for the department's budget request and for the adoption of fund estimates pursuant to Section 163.

SEC. 17. Section 180.10 of the Streets and Highways Code is repealed.

SEC. 18. Section 188.5 of the Streets and Highways Code is amended to read:

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

(1) The department has determined that in order to provide maximum safety for the traveling public and to ensure continuous and unimpeded operation of the state's transportation network, six state-owned toll bridges are in need of a seismic safety retrofit, and one state-owned toll bridge is in need of a partial retrofit and a partial replacement.

(2) The bridges identified by the department as needing seismic retrofit are the Benicia-Martinez Bridge, the Carquinez Bridge, the Richmond-San Rafael Bridge, the San Mateo-Hayward Bridge, the San Pedro-Terminal Island Bridge (also known as the Vincent Thomas Bridge), the San Diego-Coronado Bridge, and the west span of the San

Francisco-Oakland Bay Bridge. The department has also identified the east span of the San Francisco-Oakland Bay Bridge as needing to be replaced. That replacement span will be safer, stronger, longer lasting, and more cost efficient to maintain than completing a seismic retrofit for the current east span.

(3) The south span of the Carquinez Bridge is to be replaced pursuant to Regional Measure 1, as described in subdivision (b) of Section 30917.

(4) The cost estimate to retrofit the state-owned toll bridges and to replace the east span of the San Francisco-Oakland Bay Bridge is four billion six hundred thirty-seven million dollars ($4,637,000,000), as follows:

(A) The Benicia-Martinez Bridge retrofit is one hundred ninety million dollars ($190,000,000).

(B) The north span of the Carquinez Bridge retrofit is one hundred twenty-five million dollars ($125,000,000).

(C) The Richmond-San Rafael Bridge retrofit is six hundred sixty-five million dollars ($665,000,000).

(D) The San Mateo-Hayward Bridge retrofit is one hundred ninety million dollars ($190,000,000).

(E) The San Pedro-Terminal Island Bridge retrofit is sixty-two million dollars ($62,000,000).

(F) The San Diego-Coronado Bridge retrofit is one hundred five million dollars ($105,000,000).

(G) The west span of the San Francisco-Oakland Bay Bridge retrofit, as a lifeline bridge, is seven hundred million dollars ($700,000,000).

(H) Replacement of the east span of the San Francisco-Oakland Bay Bridge is two billion six hundred million dollars ($2,600,000,000).

(b) It is the intent of the Legislature that the following amounts from the following funds shall be allocated until expended, for the seismic retrofit or replacement of state-owned toll bridges:

(1) Six hundred fifty million dollars ($650,000,000) from the 1996 Seismic Retrofit Account in the Seismic Retrofit Bond Fund of 1996 for the seven state-owned toll bridges identified by the department as requiring seismic safety retrofit or replacement.

(2) One hundred forty million dollars ($140,000,000) in surplus revenues generated under the Seismic Retrofit Bond Act of 1996 that are in excess of the amount actually necessary to complete Phase Two of the state's seismic retrofit program. These excess funds shall be reallocated to assist in financing seismic retrofit of the state-owned toll bridges.

(3) Fifteen million dollars ($15,000,000) from the Vincent Thomas Toll Bridge Revenue Account.

(4) The funds necessary to meet both of the following:

(A) A principal obligation of two billion two hundred eighty-two million dollars ($2,282,000,000) from the seismic retrofit surcharge,

including any interest therefrom, imposed pursuant to Section 31010, subject to the limitation set forth in subdivision (c) and subdivision (b) of Section 31010.

(B) All costs of financing, including capitalized interest, reserves, costs of issuance, costs of credit enhancements and any other financial products necessary or desirable in connection therewith, and any other costs related to financing.

(5) Thirty-three million dollars ($33,000,000) from the San Diego-Coronado Toll Bridge Revenue Fund.

(6) Not less than seven hundred forty-five million dollars ($745,000,000) from the State Highway Account to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution, to be achieved as follows:

(A) (i) Two hundred million dollars ($200,000,000) to be appropriated for the state-local transportation partnership program described in paragraph (7) of subdivision (d) of Section 164 for the 1998–99 fiscal year.

(ii) The remaining funds intended for that program and any program savings to be made available for toll bridge seismic retrofit.

(B) A reduction of not more than seventy-five million dollars ($75,000,000) in the funding level specified in paragraph (4) of subdivision (d) of Section 164 for traffic system management.

(C) Three hundred million dollars ($300,000,000) in accumulated savings by the department achieved from better efficiency and lower costs.

(7) Not more than one hundred thirty million dollars ($130,000,000) from the Transit Capital Improvement Program funded by the Public Transportation Account in the State Transportation Fund to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution. If the contribution in subparagraph (A) of paragraph (6) exceeds three hundred seventy million dollars ($370,000,000), it is the intent that the amount from the Transit Capital Improvement Program shall be reduced by an amount that is equal to that excess.

(8) (A) The funds necessary to meet principal obligations of not less than six hundred forty-two million dollars ($642,000,000) from the state's share of the federal Highway Bridge Replacement and Rehabilitation (HBRR) Program.

(B) If the project costs exceed four billion six hundred thirty-seven million dollars ($4,637,000,000), the department may program not more than four hundred forty-eight million dollars ($448,000,000) in project savings or other available resources from the Interregional Transportation Improvement Program, the State Highway Operation and Protection Program, or federal bridge funds for that purpose.

(C) None of the funds identified in subparagraph (B) may be expended for any purpose other than the conditions and design features described in paragraph (9).

(9) The estimated cost of replacing the San Francisco-Oakland Bay Bridge listed in subparagraph (H) of paragraph (4) of subdivision (a) is based on the following conditions:

(A) The new bridge shall be located north adjacent to the existing bridge and shall be the Replacement Alternative N-6 (preferred) Suspension Structure Variation, as specified in the Final Environmental Impact Statement, dated May 1, 2001, submitted by the department to the Federal Highway Administration.

(B) The main span of the bridge shall be in the form of a single tower cable suspension design and shall be the Replacement Alternative N-6 (preferred) Suspension Structure Variation, as specified in the Final Environmental Impact Statement, dated May 1, 2001, submitted by the department to the Federal Highway Administration.

(C) The roadway in each direction shall consist of five lanes, each lane will be 12 feet wide, and there shall be 10-foot shoulders as an emergency lane for public safety purposes on each side of the main-traveled way.

(c) If the actual cost of retrofit or replacement, or both retrofit and replacement, of toll bridges is less than the cost estimate of four billion six hundred thirty-seven million dollars ($4,637,000,000), there shall be a reduction in the amount provided in paragraph (4) of subdivision (b) equal to the proportion of total funds committed to complete the projects funded from funds generated from paragraph (4) of subdivision (b) as compared to the total funds from paragraphs (6), (7), and (8) of subdivision (b), and there shall be a proportional reduction in the amount specified in paragraph (8) of subdivision (b).

(d) If the department determines that the actual costs exceed the amounts identified in subparagraph (B) of paragraph (8) of subdivision (b), the department shall report to the Legislature within 90 days from the date of that determination as to the difference and the reason for the increase in costs.

(e) Notwithstanding any other provision of law, the commission shall adopt fund estimates consistent with subdivision (b) and provide flexibility so that state funds can be made available to match federal funds made available to regional transportation planning agencies.

(f) For the purposes of this section, ''principal obligations'' are the amount of funds generated, either in cash, obligation authority, or the proceeds of a bond or other indebtedness.

(g) (1) Commencing January 1, 2004, and quarterly thereafter until completion of all applicable projects, the department shall provide quarterly seismic reports to the transportation committees of both houses

of the Legislature and to the commission for each of the toll bridge seismic retrofit projects in subdivision (a).

(2) The report shall include details of each toll bridge seismic retrofit project and all information necessary to clearly describe the status of the project, including, but not limited to, all of the following:

(A) A progress report.

(B) The baseline budget for support and capital outlay construction costs that the department assumed at the time that Chapter 907 of the Statutes of 2001 was enacted.

(C) The current or projected budget for support and capital outlay construction costs.

(D) Expenditures to date for support and capital outlay construction costs.

(E) A comparison of the current or projected schedule and the baseline schedule that was assumed at the time that Chapter 907 of the Statutes of 2001 was enacted.

(F) A summary of milestones achieved during the quarterly period and any issues identified and actions taken to address those issues.

(h) (1) Commencing on January 1, 2004, and quarterly thereafter until completion of all applicable projects, the department shall provide quarterly seismic reports to the transportation committees of both houses of the Legislature and to the commission for other seismic retrofit programs.

(2) The reports shall include all of the following:

(A) A progress report for each program.

(B) The program baseline budget for support and capital outlay construction costs.

(C) The current or projected program budget for support and capital outlay construction costs.

(D) Expenditures to date for support and capital outlay construction costs.

(E) A comparison of the current or projected schedule and the baseline schedule.

(F) A summary of milestones achieved during the quarterly period and any issues identified and actions taken to address those issues.

SEC. 19. Section 339 of the Streets and Highways Code is amended to read:

339. Route 39 is from:

(a) Route 1 near Huntington Beach to Route 72 in La Habra via Beach Boulevard.

(b) Beach Boulevard to Harbor Boulevard in La Habra via Whittier Boulevard.

(c) Whittier Boulevard in La Habra to Route 2 via Harbor Boulevard to the vicinity of Fullerton Road, then to Azusa Avenue, Azusa Avenue

to San Gabriel Canyon Road, San Gabriel Avenue southbound between Azusa Avenue and San Gabriel Canyon Road, and San Gabriel Canyon Road, other than the portion of the segment described by this subdivision that is within the city limits of Azusa and Covina.

The relinquished former portions of Route 39 within the city limits of Azusa and Covina are not a state highway and are not eligible for adoption under Section 81.

SEC. 20. Section 354 of the Streets and Highways Code is amended to read:

354. (a) Route 54 is from Route 5 near the Sweetwater River to the southern city limits of El Cajon.

(b) The relinquished former portion of Route 54 within the City of El Cajon is not a state highway and is not eligible for adoption under Section 81.

(c) The City of El Cajon may not impose any special restriction on the operation of buses or commercial motor vehicles, as defined in paragraph (1) of subdivision (c) of Section 34601 of the Vehicle Code, on the relinquished former portion of Route 54 if that restriction is in addition to restrictions authorized under other provisions of law.

SEC. 21. Section 373 of the Streets and Highways Code is amended to read:

373. Route 73 is from Route 5 near San Juan Capistrano to Route 405 via the San Joaquin Hills.

SEC. 22. Section 390 of the Streets and Highways Code is amended to read:

390. (a) Route 90 is from Route 1 northwest of the Los Angeles International Airport to Route 91 in Santa Ana Canyon passing near La Habra, except for the portion within the city limits of Yorba Linda.

(b) The relinquished former portion of Route 90 within the City of Yorba Linda is not a state highway and is not eligible for adoption under Section 81.

(c) The City of Yorba Linda shall ensure the continuity of traffic flow on the relinquished former portion of Route 90, including any traffic signal progression.

(d) For the relinquished former portion of Route 90, the City of Yorba Linda shall maintain signs directing motorists to the continuation of Route 90.

SEC. 23. Section 391 of the Streets and Highways Code is amended to read:

391. Route 91 is from:

(a) Vermont Avenue at the eastern city limits of Gardena to Route 215 in Riverside via Santa Ana Canyon.

(b) The relinquished former portions of Route 91 in the Cities of Gardena, Torrance, Lawndale, Redondo Beach, Manhattan Beach, and

Hermosa Beach are not a state highway and are not eligible for adoption under Section 81.

SEC. 24. Section 391.1 of the Streets and Highways Code is repealed.

SEC. 25. Section 391.3 of the Streets and Highways Code, as added by Section 22 of Chapter 724 of the Statutes of 1999, is repealed.

SEC. 26. Section 391.3 of the Streets and Highways Code, as added by Section 12.5 of Chapter 1007 of the Statutes of 1999, is repealed.

SEC. 27. Section 401.1 of the Streets and Highways Code is repealed.

SEC. 28. Section 407 of the Streets and Highways Code is amended to read:

407. (a) Route 107 is from Route 1 in Torrance to the southern city limits of Lawndale.

(b) The relinquished former portion of Route 107 in the City of Lawndale is not a state highway and is not eligible for adoption under Section 81.

SEC. 29. Section 407.1 of the Streets and Highways Code is repealed.

SEC. 30. Section 410 of the Streets and Highways Code is amended to read:

410. (a) Route 110 is from Route 47 in San Pedro to Glenarm Street in Pasadena.

(b) The relinquished former portion of Route 110 that is located between Glenarm Street and Colorado Boulevard in Pasadena is not a state highway and is not eligible for adoption under Section 81.

SEC. 31. Section 411 of the Streets and Highways Code is amended to read:

411. Route 111 is from:

(a) The international border south of Calexico to Route 78 near Brawley, passing east of Heber.

(b) Route 78 near Brawley to Route 86 via the north shore of the Salton Sea.

(c) Route 10 near Indio to the southeastern city limits of Rancho Mirage.

(d) The western city limits of Cathedral City to Route 10 near Whitewater.

The relinquished former portions of Route 111 within the Cities of Cathedral City and Rancho Mirage are not a state highway and are not eligible for adoption under Section 81.

SEC. 32. Section 411.5 of the Streets and Highways Code is repealed.

SEC. 33. Section 426 of the Streets and Highways Code is amended to read:

426. (a) Route 126 is from Route 101 near Ventura to Route 5.

(b) Route 126 shall be known and designated as the ''Santa Paula Freeway.''

(c) The relinquished former portion of Route 126 within the City of Santa Clarita is not a state highway and is not eligible for adoption under Section 81.

SEC. 34. Section 460 of the Streets and Highways Code is amended to read:

460. (a) Route 160 is from Route 4 near Antioch to the southern city limits of Sacramento.

(b) The relinquished former portion of Route 160 within the City of Sacramento is not a state highway and is not eligible for adoption under Section 81.

SEC. 35. Section 509 of the Streets and Highways Code is repealed.

SEC. 36. Section 820 of the Streets and Highways Code is amended to read:

820. The State of California assents to the provisions of Title 23 of the United States Code, as amended and supplemented, other acts of Congress relative to federal aid, or other cooperative highway work, or to emergency construction of public highways with funds apportioned by the government of the United States. All work done under the provisions of Title 23 or other acts of Congress relative to highways shall be performed as required under acts of Congress and the rules and regulations promulgated thereunder. Laws, or rules and regulations, of this state inconsistent with the laws, or rules and regulations, of the United States, shall not apply to that work, to the extent of the inconsistency.

CHAPTER 526

An act to add Article 10.3 (commencing with Section 25214.9) to Chapter 6.5 of Division 20 of the Health and Safety Code, and to add Article 4 (commencing with Section 41516) to Chapter 3.5 of Part 2 of, and Chapter 8.5 (commencing with Section 42460) to Part 3 of, Division 30 of the Public Resources Code, relating to hazardous and solid waste.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

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

(a) Electronic waste represents one of the fastest growing and hazardous components of California's waste stream.

(b) According to the United States Environmental Protection Agency, more than 4.3 million tons of appliances and consumer electronics were discarded in 1999.

(c) Due to the presence of toxic lead, mercury, or other hazardous or potentially hazardous materials in electronic waste, this waste poses a particular threat to public health and the environment when improperly discarded.

(d) A study conducted by the California Integrated Waste Management Board estimates that California households currently have more than 6,000,000 obsolete computer monitors and television sets ''stockpiled'' in their homes.

(e) A study for the National Safety Council projects that more than 10,000 computers and televisions become obsolete in California every day. The study further projects that three-quarters of all computers ever purchased in the United States remain stockpiled in storerooms, attics, garages, or basements.

(f) It is estimated that only 20 percent of obsolete computers and televisions are currently recovered for recycling.

(g) Electronic waste recovered for recycling, including devices from California public agencies, has been found to have been illegally handled and discarded in developing countries, posing a significant threat to public health, worker safety, and the environment in those countries.

(h) The collection, handling, and management of electronic waste that is currently recovered represents a costly and growing problem for local governments and nonprofit organizations, including Goodwill Industries and the Salvation Army.

(i) The high technology sector represents a vital and important part of California's economy.

(j) The system to reduce and recycle electronic waste established pursuant to this act should establish strict and enforceable requirements on all regulated entities while being cost-effective and providing flexibility to take advantage of the innovation of the high technology sector.

(k) The system should also ensure that the state will impose compliance obligations uniformly on all regulated entities to ensure that companies accepting their responsibilities are not penalized by the potential noncompliance of other companies.

(*l*) The system should also be scalable to national, international, and global systems to take into account obligations that may be imposed on manufacturers of hazardous electronic devices beyond those imposed under this act.

(m) The system should ensure that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within California.

(n) The Governor has requested that the Legislature enact legislation in 2003 challenging industries to assume greater responsibility for the recycling and disposal of electronic waste, stating that ''California needs a comprehensive and innovative state law that partners with product manufacturers, establishes recycling targets, and provides for the safe recycling and disposal of electronic wastes.'' The Governor further expressed support for a system that ''provides incentives to design products that are less toxic and more recyclable.''

SEC. 2. Article 10.3 (commencing with Section 25214.9) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.3. Electronic Waste

25214.9. (a) The requirements and other provisions of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code are incorporated by reference as requirements and provisions of this chapter.

(b) To the extent consistent with the federal act, the department may, by regulation, establish management standards as an alternative to one or more of the standards in this chapter, for any specified activity that involves the management of an electronic waste.

25214.10. (a) For purposes of this section ''electronic device'' has the same meaning as a ''covered electronic device'', as defined in subdivision (g) of Section 42463 of Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (a) shall take effect January 1, 2007, or on or after the date the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of any electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

SEC. 3. Article 4 (commencing with Section 41516) is added to Chapter 3.5 of Part 2 of Division 30 of the Public Resources Code, to read:

Article 4. Covered Electronic Waste

41516. (a) For purposes of this article, ''covered electronic waste'' has the same meaning as defined in subdivision (g) of Section 42463.

(b) On and after January 1, 2004, when a county or regional agency revises the countywide or regional integrated waste management plan and its elements pursuant to Section 41770, the city household hazardous waste element and county household hazardous waste element in the plan shall identify those actions the city, county, or regional agency is taking to promote the collection, consolidation, recovery, and recycling of covered electronic waste.

SEC. 5. Chapter 8.5 (commencing with Section 42460) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.5. ELECTRONIC WASTE RECYCLING

Article 1. General Provisions

42460. This act shall be known, and may be cited, as the Electronic Waste Recycling Act of 2003.

42461. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally-sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized by the producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Hazardous Electronic Waste Recycling Act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

Article 2. Definitions

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) ''Account'' means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) ''Authorized collector'' means any of the following:

(1) A city, county or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) Any entity that collects, handles, consolidates, and transports covered electronic devices and has filed a notification with the department pursuant to Article 7 (commencing with Section 66273.80) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(c) ''Board'' means the California Integrated Waste Management Board.

(d) (1) ''Consumer'' means a purchaser or owner of a covered electronic device. ''Consumer'' also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(2) (A) ''Consumer'' does not include a manufacturer who purchases specialty or medical electronic equipment that is a covered electronic device.

(B) For purposes of this paragraph, ''medical electronic equipment'' includes, but is not limited to, radiotherapy equipment, cardiology equipment, dialysis equipment, pulmonary ventilators, nuclear medicine equipment, laboratory equipment for in-vitro diagnosis, analyzers and freezers.

(C) For purposes of this paragraph ''specialty electronic equipment'' includes, but is not limited to, smoke detectors, heating regulators, and thermostats.

(e) ''Department'' means the Department of Toxic Substances Control.

(f) (1) ''Covered electronic device'' means a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally and which the department determines, when discarded or disposed, would be a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(2) ''Covered electronic device'' does not include an automobile or a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment, that contains a cathode ray tube, cathode ray tube device, flat panel screen, or other similar video

display device that is contained within, and is not separate from, the larger piece of industrial or commercial equipment.

(g) ''Covered electronic waste'' or ''covered e-waste'' means a covered electronic device that is discarded or disposed.

(h) ''Covered electronic waste recycling fee'' or ''covered e-waste recycling fee'' means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) ''Covered electronic waste recycler'' or ''covered e-waste recycler'' means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) ''Electronic waste recovery payment'' means an amount established and paid by the board pursuant to Section 42477.

(k) ''Electronic waste recycling payment'' means a payment made by the board to an authorized collector of covered electronic waste pursuant to Section 42477.

(*l*) ''Electronic waste recycling payment'' means an amount established and paid by the board pursuant to Section 42478.

(m) ''Hazardous material'' has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) ''Manufacturer'' means any of the following:

(A) A person who manufacturers a covered electronic device sold in this state.

(B) A person who sells a covered electronic device in this state under a person's brand name.

(o) ''Retailer'' means a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device. ''Retailer'' includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic

means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(p) (1) ''Sell'' or ''sale'' means any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (n), ''distributor'' means a person who sells a covered electronic device to a retailer.

Article 3. Covered Electronic Waste Recycling Fee

42464. (a) On and after July 1, 2004, a covered electronic waste recycling fee is hereby imposed upon the first sale in the state of a covered electronic device to a consumer by a retailer.

(b) A retailer that sells a covered electronic device to a consumer shall collect the fee imposed under subdivision (a) for each covered electronic device sold by the retailer in the following amounts:

(1) Six dollars ($6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars ($8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars ($10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(c) The electronic waste recycling fee collected pursuant to this section shall be transmitted to the board in accordance with a schedule and procedure that the board shall establish pursuant to Sections 42475 and 42475.2. The covered electronic waste recycling fees shall be deposited in the account pursuant to Section 42476.

(d) A retailer selling a covered electronic device may retain 3 percent of the covered electronic waste recycling fee as reimbursement for any costs associated with the collection of the fee.

(e) On and after July 1, 2005, and at least once every two years thereafter, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. The board shall base any adjustment of the covered electronic waste recycling fee on the both of following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of 100 percent of the covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

42464.2. The board may collect the fees imposed pursuant to this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The board may contract with the State Board of Equalization or another party for collection of fees due under this section.

Article 4. Manufacturer Responsibility

42465. On and after July 1, 2004, it shall be unlawful to sell a covered electronic device to a consumer in this state unless the board or department determines that the manufacturer of that covered electronic device demonstrates compliance with this chapter.

42465.1. On and after January 1, 2005, a person may not sell or offer for sale in this state a covered electronic device unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

42465.2. (a) On or before July 1, 2005, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device who sells those devices in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, PBDE's, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recycled materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

42465.3. On or before April 1, 2004, a manufacturer shall inform the retailer if a covered electronic device sold by that manufacturer is subject to the covered electronic waste recycling fee established pursuant to this chapter.

Article 5. Administration

42472. (a) The imposition of a covered electronic waste recycling fee is a matter of statewide interest and concern and is applicable uniformly throughout the state. A city, county, city and county, or other public agency may not adopt, implement, or enforce an ordinance, resolution, regulation, or rule requiring a consumer, manufacturer, or retailer to recycle covered electronic devices or imposing a covered electronic waste recycling fee upon a manufacturer, retailer, or consumer, unless expressly authorized under this chapter.

(b) Nothing in this section prohibits the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including any action relating to fees for these programs. Nothing in this section shall be construed to affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

42473. The Legislature declares that the imposition of a covered electronic waste recycling fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of covered electronic devices and there is a sufficient nexus between the fee imposed and the use of those fees to support the recycling and reuse of these devices.

42474. (a) Civil liability in an amount of up to two thousand five hundred dollars ($2,500) per offense may be administratively imposed by the board for each sale of a covered electronic device for which a

covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars ($5,000) per offense may be imposed by a superior court for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars ($25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

42474.5. This chapter and all regulations adopted pursuant to this chapter may be enforced by the department pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

42475. (a) The board shall administer this chapter in consultation with the department.

(b) The board may adopt any regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board determines to be necessary for the dissemination of information concerning the activities of the board under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

42475.1. The board and department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

42475.2. (a) The board and the department may adopt regulations to implement this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter shall be adopted by the board and the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these

regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

42475.3. The board in collaboration with the department shall convene a covered electronic waste working group comprised of representatives from manufacturers of covered electronic devices and other interested parties to develop and, by July 1, 2005, advise the board and the State and Consumer Services Agency on environmental purchasing criteria that may be used by state agencies to identify covered electronic devices with reduced environmental impacts. In defining criteria, the group shall consider the environmental impacts of products over their entire life cycle, as well as tradeoffs in other product attributes such as safety, product functionality, and cost. The group shall also consider any federal product evaluation or rating system, or market based system to promote the development and sale of environmentally conscious products.

42475.4. (a) The board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste. In implementing this section, the board shall do all of the following:

(1) Post on its Web site information on the amount of covered electronic devices sold in the state in the previous year as reported to the board.

(2) Post on its Web site information on the amount of covered electronic waste recycled in the state in the previous year as reported to the board.

(3) Develop and adopt recycling goals, with input from manufacturers, retailers, covered electronic waste recyclers, and collectors, that reflect projections of covered electronic device sales, rates of obsolescence, and stockpiles.

(b) Nothing in this section authorizes the board to establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply with this chapter, or to impose any other recycling goal or target on a manufacturer of those devices.

Article 6. Financial Provisions

42476. (a) The board and the department shall deposit all fees or fines collected under this chapter into the Electronic Waste Recovery and

Recycling Account, which is hereby created in the Integrated Waste Management Fund. The funds in the Electronic Waste Recovery and Recycling Account may be expended by the board and department, upon appropriation by the Legislature, for the following purposes:

(1) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(2) To make electronic waste recycling payments to covered electronic waste recyclers of covered electronic waste pursuant to Section 42479.

(3) To provide for costs of the board and the department to administer this chapter.

(4) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(c) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(d) The board may not provide any payment for covered electronic devices unless the materials will be handled in compliance with all statutes and regulations regarding the export of hazardous wastes. No payment may be made for covered electronic devices exported to any country where the export import of hazardous waste is prohibited.

(e) The board may not provide any payment for covered electronic waste unless the materials are handled in compliance with all statutes and regulations regarding the export of hazardous wastes, including, but not limited to, Section 42476.5.

42476.5. Except as provided in Section 42476.6, any person who intends to export covered electronic waste to a foreign destination shall comply with all of the following at least 60 days prior to export:

(a) Notify the department of the destination, contents, and volume of covered electronic waste to be exported.

(b) Demonstrate that the importation of covered electronic waste is not prohibited by any applicable law or regulation of the country of destination and that any import is conducted in accordance with all

applicable laws. As part of this demonstration, required import and operating licenses shall be forwarded to the department.

(c) Demonstrate that the exportation of covered electronic waste is conducted only in accordance with applicable international law.

(d) Demonstrate that the management of the exported covered electronic waste will be handled within the country of destination in accordance with applicable rules, standards, and requirements adopted by the Organization for Economic Co-operation and Development for the environmentally sound management of electronic waste.

(e) Demonstrate that the covered electronic waste is being exported for the purpose of reuse or recycling.

42476.6. Section 42476.5 does not apply to a component part of a covered electronic device that is exported to an authorized collector or recycler and that is reused or recycled into a new electronic component.

42477. On July 1, 2004, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state. The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

42478. On July 1, 2004, and on July 1 every two years thereafter, the board, in collaboration with the department shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover an electronic waste recycler's net cost to receive, process, and recycle a covered electronic device from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

42479. (a) (1) The board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

Article 7. State Agency Procurement

42480. (a) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

Article 8. Inapplicability of Chapter

42485. The board or the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to all cathode ray tube devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter. The order shall be stayed until all appeals are concluded. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 or 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 527

An act to add Section 14132.100 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

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

(a) It is the policy of the State of California to ensure that its residents have access to health care that is both cost-effective and of high quality.

(b) It is the intent of the Legislature to ensure that the health care safety net in California remains strong and a viable provider of health care for the uninsured and the underinsured.

(c) Federally qualified health centers and rural health clinics play an essential role in the health care safety net for low-income and uninsured or underinsured residents of California.

SEC. 2. Section 14132.100 is added to the Welfare and Institutions Code, to read:

14132.100. (a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic services described in Section 1396d (a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accord with the definition of ''visit'' set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1, thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit

rates shall be adjusted by the Medicare Economic Index in accord with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Rate changes based on a change in the scope of services provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Sec. 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or rules.

(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivisions (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Service Administration (HRSA).

(3) No change in costs shall, in and of itself, be considered a scope-of-service change unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of services defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of services is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. ''Net change'' means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for scope-of-service changes once per fiscal year, only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a scope-of-service rate change request within 90 days of the beginning of any FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the FQHC or RHC experienced a decrease in the scope of services provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a scope-of-service rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, ''significantly lower'' means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved scope-of-service change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a scope-of-service change, the adjusted reimbursement rate for that scope-of-service change shall be made retroactive to the date the scope-of-service change was initially implemented. Scope-of-service changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to ''fiscal year'' shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental payments arising

from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (*l*). These supplemental payments shall be determined separately from the scope-of-service adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include all of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant (two hundred thousand dollars ($200,000) or 1 percent of a facility's total costs, whichever is less).

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) An FQHC or RHC ''visit'' means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, ''physician'' shall be interpreted in a manner consistent with the Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a medical doctor, osteopath, podiatrist, dentist, optometrist, and

chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal services practitioner, as defined in Section 51179.1 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit.

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity (as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code), the Medicare program, or the Child Health and Disability Prevention (CHDP) program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) An entity that first qualifies as an FQHC or RHC in the year 2001 or later, a newly licensed facility at a new location added to an existing FQHC or RHC, and any entity that is an existing FQHC or RHC that is relocated to a new site shall each have its reimbursement rate established in accordance with one of the following methods, as selected by the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health care, and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for newly qualified FQHCs or RHCs as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(2) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. FQHCs or RHCs that have experienced changes in their services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. FQHCs or RHCs that have not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable FQHCs or RHCs to the department, but shall be required to identify the comparable FQHCs or RHCs.

(3) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis under its existing provider number until it is informed of its new FQHC or RHC provider number, and the department shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, or in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, shall be billed by and reimbursed at the same rate as the FQHC or RHC establishing the intermittent clinic site or the mobile unit, subject to the right of the FQHC or RHC to request a scope-of-service adjustment to the rate.

(k) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as scope-of-service changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all MEI increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable scope-of-services adjustments as provided in subdivision (e).

(*l*) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, scope-of-service changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

(m) The department shall, by no later than March 30, 2004, promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

(n) The department shall implement this section only to the extent that federal financial participation is obtained.

CHAPTER 528

An act to add Section 10205.1 to the Government Code, relating to state civil service.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 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 State Personnel Board and the Legislative Counsel Bureau entered into a demonstration project that was designed to study alternatives to traditional methods of classifying, examining, selecting, appointing, and promoting information technology employees of the Legislative Counsel Bureau who are assigned to the Legislative Data Center, a division of the Legislative Counsel Bureau.

(b) The demonstration project addresses the need for a more flexible classification structure in order to reflect the evolving information technology profession.

(c) The alternative selection procedures that have been implemented as part of the demonstration project have improved the ability of the Legislative Counsel Bureau to match candidates and information technology jobs, at the same time resulting in an expedited selection process.

(d) Based on the success of the demonstration project, it is the intent of the Legislature to make permanent the alternative methods, as utilized in the demonstration project, of classifying, examining, selecting,

appointing, and promoting information technology employees of the Legislative Counsel Bureau who are assigned to the Legislative Data Center.

SEC. 2. Section 10205.1 is added to the Government Code, to read:

10205.1. (a) Notwithstanding Sections 18523, 18900, 18901, 18930, 18930.5, 18931, 18933, 18936, 18937, 18938.5, 18939, 18950, 19050, 19052, 19054, 19054.1, 19057, 19057.1, 19057.2, 19057.4, 19081, and 19101, or any other provision of law, but consistent with the merit principles of subdivision (b) of Section 1 of Article VII of the California Constitution, the Legislative Counsel Bureau appointing authority may assign persons to classifications and ranges, conduct examinations, and make appointments as specified by this section. The purpose of this section is to improve the management of the Legislative Data Center, a division of the Legislative Counsel Bureau, and to provide the Legislative Counsel Bureau with greater flexibility and adaptability reflective of the information technology profession.

(b) The Legislative Counsel Bureau appointing authority may, as a consolidation of the information technology classifications otherwise available to the bureau, utilize the band classifications of information systems supervisor/manager, information technology specialist, and information technician, as available to the bureau on January 1, 2003, under the demonstration project described in Section 1 of the act that added this section, as those classifications may subsequently be modified by the State Personnel Board, or into other information technology classifications established by the State Personnel Board. Each of these band classifications is hereby divided into the ranges that existed in that classification on January 1, 2003, under that demonstration project, which ranges may be modified as provided for by the State Personnel Board, including the delegation of authority to the Legislative Counsel Bureau appointing authority.

(c) Through the delegation of authority to the Legislative Counsel Bureau appointing authority or otherwise, the State Personnel Board shall provide for the allocation, as appropriate, of employees of the bureau having civil service status to the appropriate classification and range authorized pursuant to this section and shall grant to each such employee the same civil service status in that classification and range without further examination.

(d) The Legislative Counsel Bureau appointing authority may conduct competitive examinations on a position-by-position basis for the information technology classifications described in this section and make appointments for information technology positions either in the manner described in Article 6 (commencing with Section 549.70) of Subchapter 4 of Chapter 1 of Division 1 of Title 2 of the California Code of Regulations in effect on January 1, 2003, or in any other manner

approved by the State Personnel Board. In its exercise of authority under this subdivision pursuant to Article 6 (commencing with Section 549.70) of Subchapter 4 of Chapter 1 of Division 1 of Title 2 of the California Code of Regulations, the Legislative Counsel Bureau appointing authority shall rank each examination candidate in the manner specified in Article 4 (commencing with Section 458.30) and Article 5 (commencing with Section 548.40) of Subchapter 2 of Chapter 1 of Division 1 of Title 2 of the California Code of Regulations.

CHAPTER 529

An act to amend Section 51747.3 of, to amend, add, and repeal Section 48204 of, and to add Section 46601.5 to, the Education Code, relating to school attendance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 46601.5 is added to the Education Code, to read:

46601.5. (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for interdistrict attendance pursuant to Section 46600 are encouraged to, in considering that request, give consideration to the child care needs of the pupil.

(b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs may not require those pupils in kindergarten or any of grades 1 to 6, inclusive, to reapply for an interdistrict transfer originally granted pursuant to an agreement executed on or after the effective date of this section unless the pupil ceases to receive child care in the district and is encouraged to allow any pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (b) of Section 48204.

(c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs is encouraged to allow that pupil to continue to attend school through the 12th grade in the same district if the parent or

guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (b) of Section 48204.

(d) This section shall remain in effect only until July 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2007, deletes or extends that date.

SEC. 2. Section 48204 is added to the Education Code, to read:

48204. (a) Notwithstanding Section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district, if he or she is any of the following:

(1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in a home or institution described in this subdivision shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(5) A pupil residing in a state hospital located within the boundaries of that school district.

(b) A school district may deem a pupil as having complied with the residency requirements for school attendance in the school district if one or both the parents or legal guardians of the pupil is employed within the boundaries of that school district.

(1) This subdivision does not require the school district within which the parents or guardians of a pupil are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or guardians of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer

of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or guardians of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For any district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one or both parents of a pupil is employed, or where the legal guardian of the pupil is employed, the pupil does not have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses and if one or both of the pupil's parents or guardians continues to be employed by an employer situated within the attendance boundaries of the school district, subject to paragraphs (1) to (6), inclusive.

(c) This section is inoperative on and after July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 48204 of the Education Code, as amended by Section 19.5 of Chapter 299 of the Statutes of 1997, is amended to read:

48204. Notwithstanding Section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district, if he or she is:

(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in the home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section is operative on and after July 1, 2007.

SEC. 4. Section 51747.3 of the Education Code is amended to read:

51747.3. (a) Notwithstanding any other provision of law, a local educational agency, including, but not limited to, a charter school, may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. A charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.

(b) Notwithstanding paragraph (1) of subdivision (d) of Section 47605 or any other provision of law, community school and independent study average daily attendance shall be claimed by school districts, county superintendents of schools, and charter schools only for pupils who are residents of the county in which the apportionment claim is reported, or who are residents of a county immediately adjacent to the county in which the apportionment claim is reported.

(c) The Superintendent of Public Instruction shall not apportion funds for reported average daily attendance, through full-time independent study, of pupils who are enrolled in school pursuant to subdivision (b) of Section 48204.

(d) In conformity with Provisions 25 and 28 of Section 2.00 of the Budget Act of 1992, this section is applicable to average daily attendance reported for apportionment purposes beginning July 1, 1992. The provisions of this section are not subject to waiver by the State Board of Education, by the State Superintendent of Public Instruction, or under any provision of Part 26.8 (commencing with Section 47600).

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 maintain the status of existing law governing school district attendance, it is necessary that this act take effect immediately.

SEC. 6. This act shall become operative only if Assembly Bill 97 is enacted and takes effect.

CHAPTER 530

An act to amend Section 12302 of, to amend , repeal, and add Section 12309 of, and to add Section 12309.5 to, the Elections Code, relating to elections.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The recent election problems in Florida and elsewhere have highlighted the need for top-to-bottom review of the election process.

(b) California has made significant progress and leads the nation in many key areas that are now models for reform in other states, such as the establishment of a statewide voter registration database to identify

and remove duplicate registrations, strong list-maintenance procedures to ensure the accuracy of the voter rolls, and provisional voting at the polling place.

(c) The Secretary of State has decertified specific punch card voting systems to eliminate potential problems associated with examining chads in determining voter intent and to move California away from obsolete voting systems and toward more modern voting equipment. This decertification will require nine counties, including Los Angeles, San Diego, Santa Clara, Sacramento, and San Bernardino Counties, to implement new voting systems. In addition, many other California counties are also seeking to upgrade election systems and equipment.

(d) The administration of elections is becoming increasingly complicated and reliant on new technology, thereby requiring elections officials to obtain new education, expertise, and skills to minimize risk of error.

(e) The accurate and efficient administration of elections depends in large part on the knowledge and ability of the citizen volunteers who staff polling places on election day. It is increasingly difficult to recruit and retain poll workers with the knowledge and skills to ensure an accurate and efficient election.

(f) The state has a responsibility to act prudently to minimize the risk of failure of any part of an election, since such a failure would have an unacceptably negative impact on the public's confidence in the accuracy and integrity of the elections process.

(g) The state has a responsibility to ensure the accurate, efficient, and uniform application of election law, regulation, and procedure.

(h) While California has made significant progress in the last decade in reforming the statutes and procedures that govern the administration of elections, and has moved forward to provide voters with more modern voting equipment, the possibility for disruption of elections, by accident or design, requires the state to establish a reform program to assist local elections officials in emergency situations and to also provide for procedures to promote the uniform and accurate administration of elections.

SEC. 2. Section 12302 of the Elections Code is amended to read:

12302. (a) Except as provided in subdivision (b), a member of a precinct board shall be a voter of the state. The member may serve only in the precinct for which his or her appointment is received.

(b) In order to provide for a greater awareness of the elections process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, an elections official may appoint not more than five students per precinct to serve under the direct supervision of precinct board members designated by the elections official. A student

may be appointed, notwithstanding lack of eligibility to vote, subject to the approval of the board of the educational institution in which the student is enrolled, if the student possesses the following qualifications:

(1) Is at least 16 years of age at the time of the election to which he or she is serving as a member of a precinct board.

(2) Is a United States citizen or will be a citizen at the time of the election to which he or she is serving as a member of a precinct board.

(3) Is a student in good standing attending a public or private secondary educational institution.

(4) Is a senior and has a grade point average of at least 2.5 on a 4.0 scale.

(c) A student appointed pursuant to subdivision (b) may not be used by a precinct board to tally votes.

SEC. 3. Section 12309 of the Elections Code is amended to read:

12309. (a) Following the appointment of members of precinct boards, the elections official shall instruct inspectors so appointed concerning their duties in connection with the conduct of the election, which instruction shall include all of the following:

(1) A summary of the rights of voters.

(2) The lawful grounds for challenge.

(3) The proper tabulating procedures.

(4) Specific directions that the polls shall be kept open to the public during voting hours and throughout the period required for the tabulation of the vote.

(5) A digest of election laws.

(6) Any other subjects that shall assist the inspectors in carrying out their duties.

(b) No person shall serve as an inspector of a precinct board at the election unless instruction has been received in accordance with this section, except that in the case of the emergency disability of a regular inspector, substitute inspectors shall be given any instruction found necessary by the elections official.

(c) At the request of the elections official, the legislative body may contract with any qualified person or organization for purposes of instructing inspectors in accordance with this section.

(d) This section shall become inoperative on June 30, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 12309 is added to the Elections Code, to read:

12309. (a) Following the appointment of members of precinct boards, the elections official shall instruct inspectors so appointed concerning their duties in connection with the conduct of the election,

which instruction shall conform to the uniform standards adopted by the Secretary of State pursuant to Section 12309.5.

(b) A person may not serve as an inspector of a precinct board at an election unless instruction has been received in accordance with this section except that, in the case of the emergency disability of a regular inspector, substitute inspectors shall be given any instruction found necessary by the elections official.

(c) At the request of the elections official, the legislative body may contract with any qualified person or organization for purposes of instructing inspectors in accordance with this section.

(d) This section shall become operative on June 30, 2005.

SEC. 5. Section 12309.5 is added to the Elections Code, to read:

12309.5. (a) No later than June 30, 2005, the Secretary of State shall adopt uniform standards for the training of precinct board members, based upon the recommendations of the task force appointed pursuant to subdivision (b). The uniform standards shall, at a minimum, address the following:

(1) The rights of voters, including, but not limited to, language access rights for linguistic minorities, the disabled, and protected classes as referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

(2) Election challenge procedures such as challenging precinct administrator misconduct, fraud, bribery, or discriminatory voting procedures as referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

(3) Operation of a jurisdiction's voting system, including, but not limited to, modernized voting systems, touch-screen voting, and proper tabulation procedures.

(4) Poll hours.

(5) Relevant election laws and any other subjects that will assist an inspector in carrying out his or her duties.

(6) Cultural competency, including, but not limited to, having adequate knowledge of diverse cultures, including languages, that may be encountered by a poll worker during the course of an election, and the appropriate skills to work with the electorate.

(7) Knowledge regarding issues confronting voters who have disabilities, including, but not limited to, access barriers and need for reasonable accommodations.

(8) Procedures involved with provisional, fail-safe provisional, absentee, and provisional absentee voting.

(b) The Secretary of State shall appoint a task force of at least 12 members who have experience in the administration of elections and other relevant backgrounds to study and recommend uniform guidelines for the training of precinct board members. The task force consists of the

chief elections officer of the two largest counties, the two smallest counties, and two county elections officers selected by the Secretary of State, or their designees. The Secretary of State shall appoint at least six other members who have elections expertise, or their designees, including members of community-based organizations that may include citizens familiar with different ethnic, cultural, and disabled populations to ensure that the task force is representative of the state's diverse electorate. The task force shall make its recommendations available for public review and comment prior to their submission to the Secretary of State and the Legislature.

(c) The task force shall file its recommendations with the Secretary of State and the Legislature no later than January 1, 2005.

CHAPTER 531

An act to amend Section 884 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 884 of the Public Utilities Code is amended to read:

884. (a) It is the intent of the Legislature that any program administered by the commission that addresses the inequality of access to advanced telecommunications services by providing those services to schools and libraries at a discounted price, provide comparable discounts to a nonprofit community technology program.

(b) If the moneys expended from the California Teleconnect Fund Administrative Committee Fund are less than the amounts appropriated in the annual Budget Act for the 2003–04 and 2004–05 fiscal years, from the unencumbered difference between what was appropriated and what was expended , notwithstanding any other law or existing program of the commission but consistent with the purposes for which those funds are appropriated, the commission may expend up to three million dollars ($3,000,000) for up to an additional 40 percent of the one-time installation costs for entities that do not have access to advanced telecommunications services.

(c) For the purpose of this section:

(1) ''Advanced telecommunications services'' includes high speed communications services such as digital subscriber line (DSL) services and T-1 technology.

(2) ''Nonprofit community technology program'' means a community-based nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and engages in diffusing technology into local communities and training local communities that have no access to, or have limited access to, the Internet and other technologies.

CHAPTER 532

An act to amend Section 1798.85 of the Civil Code, relating to privacy.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) A person or entity, not including a state or local agency, may not do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number. ''Publicly post'' or ''publicly display'' means to intentionally communicate or otherwise make available to the general public.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an

account, contract or policy, or to confirm the accuracy of the social security number. A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(b) Except as provided in subdivision (c), subdivision (a) applies only to the use of social security numbers on or after July 1, 2002.

(c) Except as provided in subdivision (f), a person or entity, not including a state or local agency, that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure, commencing in the year 2002, that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) shall be implemented within 30 days of the receipt of the request. There shall be no fee or charge for implementing the request.

(4) A person or entity, not including a state or local agency, shall not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(d) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(e) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(f) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or

administrative services only, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders or individual contractholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders or new individual contractholders and new groups, including new groups administered or issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (f) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(3) Notwithstanding paragraph (2), the Director of the Department of Managed Health Care, pursuant to the authority granted under Section 1346 of the Health and Safety Code, or the Insurance Commissioner, pursuant to the authority granted under Section 12921 of the Insurance Code, and upon a determination of good cause, may grant extensions not to exceed six months for compliance by health care service plans and insurers with the requirements of this section when requested by the health care service plan or insurer. Any extension granted shall apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors.

(g) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a provider of health care, a health care service plan, a licensed health care professional, or a contractor, as those terms are defined in Section 56.05, that complies with the federal law shall be deemed in compliance with this section.

SEC. 2. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) Except as provided in subdivisions (b), (h), and (i), a person or entity may not do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number. ''Publicly post'' or ''publicly display'' means to intentionally communicate or otherwise make available to the general public.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number. A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(b) Except as provided in subdivision (e), a person or entity that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, and a state or local agency that has used, prior to January 1, 2004, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after January 1, 2004, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) is

implemented within 30 days of the receipt of the request. There may not be a fee or charge for implementing the request.

(4) The person or entity does not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(c) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(d) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(e) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders or individual contractholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders or new individual contractholders and new groups, including new groups administered or issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (e) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(3) Notwithstanding paragraph (2), the Director of the Department of Managed Health Care, pursuant to the authority granted under Section 1346 of the Health and Safety Code, or the Insurance Commissioner, pursuant to the authority granted under Section 12921 of the Insurance Code, and upon a determination of good cause, may grant extensions not to exceed six months for compliance by health care service plans and insurers with the requirements of this section when requested by the health care service plan or insurer. Any extension granted shall apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors.

(f) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a provider of health care, a health care service plan, a licensed health care professional, or a contractor, as those terms are defined in Section 56.05, that complies with the federal law shall be deemed in compliance with this section.

(g) A person or entity may not encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number, as required by this section.

(h) This section shall become operative, with respect to the University of California, in the following manner:

(1) On or before January 1, 2004, the University of California shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the University of California shall comply with paragraphs (4) and (5) of subdivision (a).

(i) This section shall become operative with respect to the Franchise Tax Board on January 1, 2007.

(j) This section shall become operative with respect to the California community college districts on January 1, 2007.

(k) This section shall become operative with respect to the California State University system on July 1, 2005.

(*l*) This section shall become operative, with respect to the California Student Aid Commission and its auxiliary organization, in the following manner:

(1) On or before January 1, 2004, the Commission and its auxiliary organization shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the Commission and its auxiliary organization shall comply with paragraphs (4) and (5) of subdivision (a).

SEC. 3. Section 2 of this bill incorporates amendments to Section 1798.85 of the Civil Code proposed by both this bill and SB 25. 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 1798.85 of the Civil Code, and (3) this bill is enacted after SB 25, in which case Section 1 of this bill shall not become operative.

CHAPTER 533

An act to amend Sections 1785.11.1 and 1785.11.2 of, to add Section 1799.1b to, to add Title 1.81.2 (commencing with Section 1798.90.1) to Part 4 of Division 3 to, the Civil Code, to amend Sections 530.6 and 530.8 of the Penal Code, and to amend Section 2891 of the Public Utilities Code, relating to personal information.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 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 Identity Theft Prevention and Assistance Act.

SEC. 2. Section 1785.11.1 of the Civil Code is amended to read:

1785.11.1. (a) A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. ''Security alert'' means a notice placed in a consumer's credit report, at the request of the consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(b) A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of the existence of a security alert in the credit report of that consumer, regardless of whether a full credit report, credit score, or summary report is requested.

(c) Each consumer credit reporting agency shall maintain a toll-free telephone number to accept security alert requests from consumers 24 hours a day, seven days a week.

(d) The toll-free telephone number shall be included in any written disclosure by a consumer credit reporting agency to any consumer

pursuant to Section 1785.15 and shall be printed in a clear and conspicuous manner.

(e) A consumer credit reporting agency shall place a security alert on a consumer's credit report no later than five business days after receiving a request from the consumer.

(f) The security alert shall remain in place for at least 90 days, and a consumer shall have the right to request a renewal of the security alert.

(g) A consumer credit reporting agency shall notify each consumer who has requested that a security alert be placed on his or her consumer credit report of the expiration date of the alert.

(h) Notwithstanding Section 1785.19, any consumer credit reporting agency that recklessly, willfully, or intentionally fails to place a security alert pursuant to this section shall be liable for a penalty in an amount of up to two thousand five hundred dollars ($2,500) and reasonable attorneys' fees.

SEC. 2.5. Section 1785.11.1 of the Civil Code is amended to read:

1785.11.1. (a) A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. ''Security alert'' means a notice placed in a consumer's credit report, at the request of the consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(b) A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of the existence of a security alert in the credit report of that consumer, regardless of whether a full credit report, credit score, or summary report is requested.

(c) Each consumer credit reporting agency shall maintain a toll-free telephone number to accept security alert requests from consumers 24 hours a day, seven days a week.

(d) The toll-free telephone number shall be included in any written disclosure by a consumer credit reporting agency to any consumer pursuant to Section 1785.15 and shall be printed in a clear and conspicuous manner.

(e) A consumer credit reporting agency shall place a security alert on a consumer's credit report no later than five business days after receiving a request from the consumer.

(f) The security alert shall remain in place for at least 90 days, and a consumer shall have the right to request a renewal of the security alert.

(g) A consumer credit reporting agency shall notify each consumer who has requested that a security alert be placed on his or her consumer credit report of the expiration date of the alert.

(h) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, or with the purchase, lease, or rental of goods or non-credit-related services and who receives notification of a security alert pursuant to subdivision (a) may not lend money, extend credit, or complete the purchase, lease, or rental of goods or non-credit-related services without taking reasonable steps to verify the consumer's identity, in order to ensure that the application for an extension of credit or for the purchase, lease, or rental of goods or noncredit related services is not the result of identity theft. If the consumer has placed a statement with the security alert in his or her file requesting that identity be verified by calling a specified telephone number, any person who receives that statement with the security alert in a consumer's file pursuant to subdivision (a) shall take reasonable steps to verify the identity of the consumer by contacting the consumer using the specified telephone number prior to lending money, extending credit, or completing the purchase, lease, or rental of goods or non-credit-related services. If a person uses a consumer credit report to facilitate the extension of credit or for another permissible purpose on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person may verify a consumer's identity under this section in lieu of the subsidiary, affiliate, agent, assignee, or prospective assignee.

(i) For purposes of this section, ''extension of credit'' does not include an increase in the dollar limit of an existing open-end credit plan, as defined in Regulation Z issued by the Board of Governors of the Federal Reserve System (12 C.F.R. 226.2), or any change to, or review of, an existing credit account.

(j) If reasonable steps are taken to verify the identity of the consumer pursuant to subdivision (b) of Section 1785.20.3, those steps constitute compliance with the requirements of this section, except that if a consumer has placed a statement including a telephone number with the security alert in his or her file, his or her identity shall be verified by contacting the consumer using that telephone number as specified pursuant to subdivision (g).

(k) Notwithstanding Section 1785.19, any consumer credit reporting agency that recklessly, willfully, or intentionally fails to place a security alert pursuant to this section shall be liable for a penalty in an amount of up to two thousand five hundred dollars ($2,500) and reasonable attorneys' fees.

SEC. 3. Section 1785.11.2 of the Civil Code is amended to read:

1785.11.2. (a) A consumer may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. ''Security freeze'' means a notice placed in a consumer's credit report, at the request of the consumer and

subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d), shall comply with the request no later than three business days after receiving the request.

(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report

pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(k) A consumer credit reporting agency shall require proper identification, as defined in subdivision (c) of Section 1785.15, of the person making a request to place or remove a security freeze.

(*l*) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, ''reviewing the account'' includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) of Section 1785.11.2 for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(8) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(m) This act does not prevent a consumer credit reporting agency from charging a fee of no more than ten dollars ($10) to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze for a period of time, or a fee of no more than twelve dollars ($12) for a temporary lift of a freeze for a specific party, regarding access to a consumer credit report, except that a consumer credit reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

SEC. 4. Title 1.81.2 (commencing with Section 1798.90.1) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.2. CONFIDENTIALITY OF DRIVER'S LICENSE INFORMATION

1798.90.1. (a) (1) Any business may swipe a driver's license or identification card issued by the Department of Motor Vehicles in any electronic device for the following purposes:

(A) To verify age or the authenticity of the driver's license or identification card.

(B) To comply with a legal requirement to record, retain, or transmit that information.

(C) To transmit information to a check service company for the purpose of approving negotiable instruments, electronic funds transfers, or similar methods of payments, provided that only the name and identification number from the license or the card may be used or retained by the check service company.

(D) To collect or disclose personal information that is required for reporting, investigating, or preventing fraud, abuse, or material misrepresentation.

(2) A business may not retain or use any of the information obtained by that electronic means for any purpose other than as provided herein.

(b) As used in this section, ''business'' means a proprietorship, partnership, corporation, or any other form of commercial enterprise.

(c) A violation of this section constitutes a misdemeanor punishable by imprisonment in a county jail for no more than one year, or by a fine of no more than ten thousand dollars ($10,000), or by both.

SEC. 5. Section 1799.1b is added to the Civil Code, to read:

1799.1b. (a) Any credit card issuer that receives a change of address request, other than for a correction of a typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that request is received shall send to that cardholder a change of address notification that is addressed to the cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to the effective date of the change of address, the notification shall be sent within 30 days of the change of address request. If the replacement credit card is requested after the effective date of the change of address, the notification shall be sent within 30 days of the request for the replacement credit card.

(b) Any business entity that provides telephone accounts that receives a change of address request, other than for a correction of a typographical error, from an accountholder who orders new service, shall send to that accountholder a change of address notification that is addressed to the accountholder at the accountholder's previous address of record. The notification shall be sent within 30 days of the request for new service.

(c) The notice required pursuant to subdivision (a) or (b) may be given by telephone or e-mail communication if the credit card issuer or business entity that provides telephone accounts reasonably believes that it has the current telephone number or e-mail address for the accountholder or cardholder who has requested a change of address. If the notification is in writing it may not contain the consumer's account number, social security number, or other personal identifying information, but may contain the consumer's name, previous address, and new address of record. For business entities described in subdivision (b), the notification may also contain the accountholder's telephone number.

(d) A credit card issuer or a business entity that provides telephone accounts are not required to send a change of address notification when a change of address request is made in person by a consumer who has presented valid identification, or is made by telephone and the requester has provided a unique alpha-numeric password.

(e) The following definitions shall apply to this section:

(1) ''Credit account'' has the same meaning as ''credit card,'' as defined in subdivision (a) of Section 1747.02.

(2) ''Telephone account'' means an account with a telephone corporation, as defined in Section 234 of the Public Utilities Code.

SEC. 6. Section 530.6 of the Penal Code is amended to read:

530.6. (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the

petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The Judicial Council of California shall develop a form for use in issuing an order pursuant to this section.

SEC. 7. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, or commercial mobile radio service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person, or a law enforcement officer specified by the person, shall be entitled to receive information related to the application or account, including a copy of the unauthorized person's application or application information and a record of transactions or charges associated with the application or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which the application was filed or the account was opened shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) Any request made pursuant to subdivision (a) to a person or entity subject to the provisions of Section 2891 of the Public Utilities Code shall be in writing and the requesting person shall be deemed to be the subscriber for purposes of that section.

(c) (1) Before a person or entity provides copies to a law enforcement officer pursuant to subdivision (a), the person or entity may require the requesting person to submit a signed and dated statement by which the requesting person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the types of records that the requesting person authorizes to be disclosed.

(2) The person or entity shall include in the statement to be signed by the requesting person a notice that the requesting person has the right at any time to revoke the authorization.

(d) (1) A failure to produce records pursuant to subdivision (a) shall be addressed by the court in the jurisdiction in which the victim resides or in which the request for information was issued. At the victim's request, the Attorney General, the district attorney, or the prosecuting city attorney may file a petition to compel the attendance of the person or entity in possession of the records, as described in subdivision (a), and order the production of the requested records to the court. The petition shall contain a declaration from the victim stating when the request for information was made, that the information requested was not provided, and what response, if any, was made by the person or entity. The petition shall also contain copies of the police report prepared pursuant to Section 530.6 and the request for information made pursuant to this section upon the person or entity in possession of the records, as described in subdivision (a), and these two documents shall be kept confidential by the court. The petition and copies of the police report and the application shall be served upon the person or entity in possession of the records, as described in subdivision (a). The court shall hold a hearing on the petition no later than 10 court days after the petition is served and filed. The court shall order the release of records to the victim as required pursuant to this section.

(2) In addition to any other civil remedy available, the victim may bring a civil action against the entity for damages, injunctive relief or other equitable relief, and a penalty of one hundred dollars ($100) per day of noncompliance, plus reasonable attorneys' fees.

(e) As used in this section, ''application'' includes the addition of authorized users to an existing account or any other changes made to an existing account.

(f) As used in this section, ''law enforcement officer'' means a peace officer as defined by Section 830.1 of the Penal Code.

(g) As used in this section, ''commercial mobile radio service'' means ''commercial mobile radio service'' as defined in section 20.3 of Title 47 of the Code of Federal Regulations.

SEC. 7.5. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio

service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person, or a law enforcement officer specified by the person, shall be entitled to receive information related to the application or account, including a copy of the unauthorized person's application or application information and a record of transactions or charges associated with the application or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which the application was filed or the account was opened shall provide copies of all paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) Any request made pursuant to subdivision (a) to a person or entity subject to the provisions of Section 2891 of the Public Utilities Code shall be in writing and the requesting person shall be deemed to be the subscriber for purposes of that section.

(c) (1) Before a person or entity provides copies to a law enforcement officer pursuant to subdivision (a), the person or entity may require the requesting person to submit a signed and dated statement by which the requesting person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the types of records that the requesting person authorizes to be disclosed.

(2) The person or entity shall include in the statement to be signed by the requesting person a notice that the requesting person has the right at any time to revoke the authorization.

(d) (1) A failure to produce records pursuant to subdivision (a) shall be addressed by the court in the jurisdiction in which the victim resides or in which the request for information was issued. At the victim's request, the Attorney General, the district attorney, or the prosecuting city attorney may file a petition to compel the attendance of the person or entity in possession of the records, as described in subdivision (a), and order the production of the requested records to the court. The petition shall contain a declaration from the victim stating when the request for

information was made, that the information requested was not provided, and what response, if any, was made by the person or entity. The petition shall also contain copies of the police report prepared pursuant to Section 530.6 and the request for information made pursuant to this section upon the person or entity in possession of the records, as described in subdivision (a), and these two documents shall be kept confidential by the court. The petition and copies of the police report and the application shall be served upon the person or entity in possession of the records, as described in subdivision (a). The court shall hold a hearing on the petition no later than 10 court days after the petition is served and filed. The court shall order the release of records to the victim as required pursuant to this section.

(2) In addition to any other civil remedy available, the victim may bring a civil action against the entity for damages, injunctive relief or other equitable relief, and a penalty of one hundred dollars ($100) per day of noncompliance, plus reasonable attorneys' fees.

(e) For the purposes of this section, the following terms have the following meanings:

(1) ''Application'' means a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing account, or any other changes made to an existing account.

(2) ''Commercial mobile radio service'' means ''commercial mobile radio service'' as defined in section 20.3 of Title 47 of the Code of Federal Regulations.

(3) ''Law enforcement officer'' means a peace officer as defined by Section 830.1.

SEC. 8. Section 2891 of the Public Utilities Code is amended to read:

2891. (a) No telephone or telegraph corporation shall make available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information:

(1) The subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to the restrictions in Section 2893, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called.

(2) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information to any electrical, gas, heat, telephone, telegraph, or water corporation, or centralized credit check system, for

the purpose of determining the creditworthiness of new utility subscribers.

(3) The services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph line to provide service to the residential subscriber.

(4) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed.

(b) Any residential subscriber who gives his or her written consent for the release of one or more of the categories of personal information specified in subdivision (a) shall be informed by the telephone or telegraph corporation regarding the identity of each person or corporation to whom the information has been released, upon written request. The corporation shall notify every residential subscriber of the provisions of this subdivision whenever consent is requested pursuant to this subdivision.

(c) Any residential subscriber who has, pursuant to subdivision (b), given written consent for the release of one or more of the categories of personal information specified in subdivision (a) may rescind this consent upon submission of a written notice to the telephone or telegraph corporation. The corporation shall cease to make available any personal information about the subscriber, within 30 days following receipt of notice given pursuant to this subdivision.

(d) This section does not apply to any of the following:

(1) Information provided by residential subscribers for inclusion in the corporation's directory of subscribers.

(2) Information customarily provided by the corporation through directory assistance services.

(3) Postal ZIP Code information.

(4) Information provided under supervision of the commission to a collection agency by the telephone corporation exclusively for the collection of unpaid debts.

(5) Information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property.

(6) Information provided to a law enforcement agency in response to lawful process.

(7) Information which is required by the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(8) Information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas.

(9) Information required to be provided by the corporation pursuant to rules and orders of the commission or the Federal Communications Commission regarding the provision over telephone lines by parties other than the telephone and telegraph corporations of telephone or information services.

(10) The name and address of the lifeline customers of a telephone corporation provided by that telephone corporation to a public utility for the sole purpose of low-income ratepayer assistance outreach efforts. The telephone corporation receiving the information request pursuant to this paragraph may charge the requesting utility for the cost of the search and release of the requested information. The commission, in its annual low-income ratepayer assistance report, shall assess whether this information has been helpful in the low-income ratepayer assistance outreach efforts.

(11) Information provided in response to a request pursuant to subdivision (a) of Section 530.8 of the Penal Code.

(e) Every violation is a grounds for a civil suit by the aggrieved residential subscriber against the telephone or telegraph corporation and its employees responsible for the violation.

(f) For purposes of this section, ''access number'' means a telex, teletex, facsimile, computer modem, or any other code which is used by a residential subscriber of a telephone or telegraph corporation to direct a communication to another subscriber of the same or another telephone or telegraph corporation.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 1785.11.1 of the Civil Code proposed by both this bill and SB 25. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, but the amendments to Section 1785.11.1 of the Civil Code made by this bill become operative first, (2) each bill amends Section 1785.11.1 of the Civil Code, and (3) this bill is enacted after SB 25, in which case Section 1785.11.1 of the Civil Code, as amended by Section 2 of this bill shall remain operative only until July 1, 2004, at which time Section 2.5 of this bill shall become operative.

SEC. 10. Section 7.5 of this bill incorporates amendments to Section 530.8 of the Penal Code proposed by both this bill and SB 684. 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 530.8 of the Penal Code, and (3) this bill is enacted after SB 684, in which case Section 7 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 534

An act to amend Section 530.8 of the Penal Code, relating to identity theft.

[Approved by Governor September 24, 2003. Filed with Secretary of State September 25, 2003.]

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

SECTION 1. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person, or a law enforcement officer specified by the person, shall be entitled to receive information related to the application or account, including a copy of the unauthorized person's application or application information and a record of transactions or charges associated with the application or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which the application was filed or the account was opened shall provide copies of all paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) Any request made pursuant to subdivision (a) to a person or entity subject to the provisions of Section 2891 of the Public Utilities Code shall be in writing and the requesting person shall be deemed to be the subscriber for purposes of that section.

(c) (1) Before a person or entity provides copies to a law enforcement officer pursuant to subdivision (a), the person or entity may require the requesting person to submit a signed and dated statement by which the requesting person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the types of records that the requesting person authorizes to be disclosed.

(2) The person or entity shall include in the statement to be signed by the requesting person a notice that the requesting person has the right at any time to revoke the authorization.

(d) For the purposes of this section, the following terms have the following meanings:

(1) ''Application'' means a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing, or any other changes made to an existing account.

(2) ''Commercial mobile radio service'' means ''commercial mobile radio service'' as defined in Section 20.3 of Title 47 of the Code of Federal Regulations.

(3) ''Law enforcement officer'' means a peace officer as defined by Section 830.1.

SEC. 2. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person, or a law enforcement officer specified by the person, shall be entitled to receive information related to the application or account, including a copy of the unauthorized person's application or application information and a record of transactions or charges

associated with the application or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which the application was filed or the account was opened shall provide copies of all paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) Any request made pursuant to subdivision (a) to a person or entity subject to the provisions of Section 2891 of the Public Utilities Code shall be in writing and the requesting person shall be deemed to be the subscriber for purposes of that section.

(c) (1) Before a person or entity provides copies to a law enforcement officer pursuant to subdivision (a), the person or entity may require the requesting person to submit a signed and dated statement by which the requesting person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the types of records that the requesting person authorizes to be disclosed.

(2) The person or entity shall include in the statement to be signed by the requesting person a notice that the requesting person has the right at any time to revoke the authorization.

(d) (1) A failure to produce records pursuant to subdivision (a) shall be addressed by the court in the jurisdiction in which the victim resides or in which the request for information was issued. At the victim's request, the Attorney General, the district attorney, or the prosecuting city attorney may file a petition to compel the attendance of the person or entity in possession of the records, as described in subdivision (a), and order the production of the requested records to the court. The petition shall contain a declaration from the victim stating when the request for information was made, that the information requested was not provided, and what response, if any, was made by the person or entity. The petition shall also contain copies of the police report prepared pursuant to Section 530.6 and the request for information made pursuant to this section upon the person or entity in possession of the records, as described in subdivision (a), and these two documents shall be kept confidential by the court. The petition and copies of the police report and the application shall be served upon the person or entity in possession of the records, as described in subdivision (a). The court shall hold a hearing on the

petition no later than 10 court days after the petition is served and filed. The court shall order the release of records to the victim as required pursuant to this section.

(2) In addition to any other civil remedy available, the victim may bring a civil action against the entity for damages, injunctive relief or other equitable relief, and a penalty of one hundred dollars ($100) per day of noncompliance, plus reasonable attorneys' fees.

(e) For the purposes of this section, the following terms have the following meanings:

(1) ''Application'' means a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing account, or any other changes made to an existing account.

(2) ''Commercial mobile radio service'' means ''commercial mobile radio service'' as defined in section 20.3 of Title 47 of the Code of Federal Regulations.

(3) ''Law enforcement officer'' means a peace officer as defined by Section 830.1.

SEC. 3. Section 2 of this bill incorporates amendments to Section 530.8 of the Penal Code proposed by both this bill and SB 602. 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 530.8 of the Penal Code, and (3) this bill is enacted after SB 602, in which case Section 1 of this bill shall not become operative.

CHAPTER 535

An act to amend Section 13823.11 of the Penal Code, relating to sexual assault victims.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e) (1) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(2) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(f) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

(1) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.

(2) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(3) Documentation of injuries and evidence collected.

Prepubertal children shall not have internal vaginal or anal examinations unless absolutely necessary. This does not preclude careful collection of evidence using a swab.

(g) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except where he or she specifically objects:

(A) Clothing worn during the assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs and slides from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of sperm and sperm motility, and for genetic marker typing.

(D) If indicated by the history of contact, the victim's urine and blood sample, for toxicology purposes, to determine if drugs or alcohol were used in connection with the assault. Toxicology results obtained pursuant to this paragraph shall not be admissible in any criminal or civil action or proceeding against any victim who consents to the collection of physical evidence pursuant to this paragraph. Except for purposes of prosecuting or defending the crime or crimes necessitating the examination specified by this section, any toxicology results obtained pursuant to this paragraph shall be kept confidential, may not be further disclosed, and shall not be required to be disclosed by the victim for any purpose not specified in this paragraph. The victim shall specifically be informed of the immunity and confidentiality safeguards provided herein.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

(4) (A) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(B) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(h) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs and slides shall be air-dried prior to packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

SEC. 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 536

An act to amend Section 11591 of the Health and Safety Code, and to amend Sections 291 and 291.1 of the Penal Code, relating to crimes.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 11591 of the Health and Safety Code is amended to read:

11591. Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do one of the following:

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

(c) If the school employee is a teacher in any private school of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the private school authority employing the teacher and shall immediately give written notice of the arrest to the private school authority employing the teacher.

SEC. 2. Section 291 of the Penal Code is amended to read:

291. Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the offenses enumerated in Section 290, subdivision (a) of Section 261, or Section 44010 of the Education Code, of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do either of the following:

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of

schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

SEC. 3. Section 291.1 of the Penal Code is amended to read:

291.1. Every sheriff or chief of police, or Commissioner of the California Highway Patrol, upon the arrest for any of the offenses enumerated in Section 290 or Section 44010 of the Education Code, of any person who is employed as a teacher in any private school of this state, shall, provided that he or she knows that the arrestee is a school employee, immediately give written notice of the arrest to the private school authorities employing the teacher. The sheriff, chief of police, or Commissioner of the California Highway Patrol, provided that he or she knows that the arrestee is a school employee, shall immediately notify by telephone the private school authorities employing the teacher of the arrest.

CHAPTER 537

An act to add Section 680 to the Penal Code, relating to DNA evidence.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 680 is added to the Penal Code, to read:

680. (a) This section shall be known as and may be cited as the ''Sexual Assault Victims' DNA Bill of Rights.''

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

(4) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(7) For the purpose of this section, ''law enforcement'' means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(c) (1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. Nothing in this subdivision requires that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing absent a specific request from the victim or the victim's designee.

(2) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case.

(B) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene

evidence has been entered into the Department of Justice Data Bank of case evidence.

(C) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which is in their possession. It is not intended to affect the manner of or frequency with which the Department of Justice provides this information to law enforcement agencies.

(d) If the law enforcement agency elects not to analyze DNA evidence within the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289, where the identity of the perpetrator is in issue, shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(e) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations as set forth in Section 803, a victim of a violation of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written notification by the law enforcement agency of that intention.

(f) Written notification under subdivision (d) or (e) shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case where the election not to analyze the DNA or the destruction or disposal occurs prior to the expiration of the statute of limitations specified in subdivision (i) of Section 803.

(g) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information required to be provided by this section.

(h) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (c) do so in a timely manner and, upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware. In order to be entitled to receive notice under this section, the victim or the victim's designee shall keep appropriate authorities informed of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and any changes

of the name, address, telephone number, and electronic mail address, if an electronic mailing address is available.

(i) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

(j) The sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (d) or (e).

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 538

An act to amend Sections 290 and 290.4 of the Penal Code, relating to sex offenders.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the

information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285,

286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that

demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a

mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or

discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall

transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking

documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or

agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of

Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; the police department of any campus of the University of California, California State University, or community college. "Designated law enforcement entity'' shall also mean the police

department of any school district, as defined in subdivision (b) of Section 830.32, except that nothing in this subdivision shall authorize these departments to make disclosures about registrants intended to reach persons beyond the school community.

(J) ''School community'' means those persons present at, those persons regularly frequenting, and the parents of any student attending, a school providing instruction in kindergarten or grades 1 to 12, inclusive, or any place associated with one of these schools. A place associated with a school includes campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the school for educational instruction, business, or school events; and public areas contiguous to any school or facility that are frequented by students, employees, or volunteers of the school.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that

the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the attempted commission of any of these offenses; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, a photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a ''900'' telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the name or address of a listed person's employer, or the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above-listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair

color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) The department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the name or address of a listed person's employer, or the listed person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium, to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290, except that school district police departments may receive the information only upon request. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriffs' departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290 may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license, California identification card, or military identification card and orders with proof of permanent assignment or attachment to a military command or vessel in California, showing the applicant to be at least 18 years of age. The applicant shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office. A person under 18 years of age may accompany an applicant who is that person's parent or legal guardian for the purpose of viewing the CD-ROM or other electronic medium.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic

medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the ''900'' telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the ''900'' telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the ''900'' telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the ''900'' telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the ''900'' telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes of relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the ''900'' telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the ''900'' telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the ''900'' telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the ''900'' telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the ''900'' telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the ''900'' telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the ''900'' telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the ''900'' telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to

identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) On or before July 1, 2001, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(n) This section shall remain operative only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

CHAPTER 539

An act to amend Sections 4001, 4002, 4003, 4008, 4062, 4200, 4202, 4312, 4400, and 4403 of, and to add Sections 4083, 4106, 4200.2, 4200.3, 4200.4, 4314, and 4315 to, the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 13 members.

(b) The Governor shall appoint seven competent pharmacists who reside in different parts of the state to serve as members of the board. The Governor shall appoint four public members, and the Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.

(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following practice settings: an acute care hospital, an independent community pharmacy, a chain community pharmacy, and a long-term health care or skilled nursing facility. The pharmacist appointees shall also include a pharmacist who is a member of a labor union that represents pharmacists. For the

purposes of this subdivision, a ''chain community pharmacy'' means a chain of 75 or more stores in California under the same ownership, and an ''independent community pharmacy'' means a pharmacy owned by a person or entity who owns no more than four pharmacies in California.

(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.

(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.

(f) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 4002 of the Business and Professions Code is amended to read:

4002. (a) The board shall elect a president, a vice president, and a treasurer. The officers of the board shall be elected by a majority of the membership of the board.

(b) The principal office of the board shall be located in Sacramento. The board shall hold a meeting at least once in every four months. Seven members of the board constitute a quorum.

SEC. 3. Section 4003 of the Business and Professions Code is amended to read:

4003. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The executive officer may or may not be a member of the board as the board may determine.

(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer shall also be entitled to travel and other expenses necessary in the performance of his or her duties.

(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.

(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its

receipt therefor. Besides the duties required by this chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.

(e) In accordance with Sections 101.1 and 473.1, this section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect during business hours all pharmacies, wholesalers, dispensaries, stores, or places where drugs or devices are compounded, prepared, furnished, dispensed, or stored.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) (A) A pharmacy inspector employed by the board or in the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated a provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code.

(B) If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, a person, acting pursuant to subdivision (a) within the scope of his or her authority, for false arrest or false imprisonment arising out of an arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was

lawful. An inspector shall not be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 5. Section 4062 of the Business and Professions Code is amended to read:

4062. (a) Notwithstanding Section 4059 or any other provision of law, a pharmacist may, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency, to further the health and safety of the public. A record containing the date, name, and address of the person to whom the drug or device is furnished, and the name, strength, and quantity of the drug or device furnished shall be maintained. The pharmacist shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding Section 4060 or any other provision of law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

(b) During a declared federal, state, or local emergency, the board may waive application of any provisions of this chapter or the regulations adopted pursuant to it if, in the board's opinion, the waiver will aid in the protection of public health or the provision of patient care.

SEC. 6. Section 4083 is added to the Business and Professions Code, to read:

4083. (a) An inspector may issue an order of correction to a licensee directing the licensee to comply with this chapter or regulations adopted pursuant to this chapter.

(b) The order of correction shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statute or regulations violated.

(c) The order of correction shall inform the licensee that within 30 days of service of the order of correction, the licensee may do either of the following:

(1) Submit a written request for an office conference with the board's executive officer to contest the order of correction.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the licensee's legal counsel or authorized representative may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the order of correction.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the order of correction. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the order of correction.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the order of correction.

(2) Comply with the order of correction and submit a written corrective action plan to the inspector documenting compliance. If an office conference is not requested pursuant to this section, compliance with the order of correction shall not constitute an admission of the violation noted in the order of correction.

(d) The order of correction shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available on the pharmacy premises a copy of the order of correction and corrective action plan for at least three years from the date of issuance of the order of correction.

(f) Nothing in this section shall in any way limit the board's authority or ability to do any of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775, 1775.15, 1777, or 1778 of Title 16 of the California Code of Regulations.

(2) Issue a letter of admonishment pursuant to Section 4315.

(3) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

(g) Unless a writ of mandate is filed, a citation issued, a letter of admonishment issued, or a disciplinary proceeding instituted, an order of correction shall not be considered a public record and shall not be disclosed pursuant to a request under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 7. Section 4106 is added to the Business and Professions Code, to read:

4106. For purposes of license verification, a person may rely upon a printout from the board's Internet Web site that includes the issuance and expiration dates of any license issued by the board.

SEC. 8. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board shall license as a pharmacist, and issue a certificate to, any applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the applicant has received a grade satisfactory to the board on an examination designed to measure the equivalency of foreign pharmacy education with that required of domestic graduates.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has had 1,500 hours of pharmaceutical experience in accordance with regulations adopted by the board.

(A) ''Pharmaceutical experience,'' constitutes service and experience in a pharmacy under the personal supervision of a pharmacist, and consists of service and experience predominantly related to the selling of drugs, compounding physician's prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes.

(B) To be credited to the total number of hours required by this subdivision, this experience shall have been obtained in pharmacies and under conditions set forth by rule or regulation of the board.

(6) Has passed a written and practical examination given by the board prior to December 31, 2003, or has passed the North American Pharmacist Licensure Examination and the Multi-State Pharmacy Jurisprudence Examination for California on or after January 1, 2004.

(b) Proof of the qualifications of an applicant for licensure as a pharmacist, shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board, the fees provided by this chapter. The fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 9. Section 4200.2 is added to the Business and Professions Code, to read:

4200.2. When developing the Multi-State Pharmacy Jurisprudence Examination for California, the board shall include all of the following:

(a) Examination items to demonstrate the candidate's proficiency in patient communication skills.

(b) Aspects of contemporary standards of practice for pharmacists in California, including, but not limited to, the provision of pharmacist care and the application of clinical knowledge to typical pharmacy practice situations that are not evaluated by the North American Pharmacy Licensure Examination.

SEC. 10. Section 4200.3 is added to the Business and Professions Code, to read:

4200.3. (a) The examination process shall be regularly reviewed pursuant to Section 139.

(b) The examination process shall meet the standards and guidelines set forth in the Standards for Educational and Psychological Testing and the Federal Uniform Guidelines for Employee Selection Procedures. The board shall work with the Office of Examination Resources of the department or with an equivalent organization who shall certify at minimum once every five years that the examination process meets these national testing standards. If the department determines that the examination process fails to meet these standards, the board shall terminate its use of the North American Pharmacy Licensure Examination and shall use only the written and practical examination developed by the board.

(c) The examination shall meet the mandates of subdivision (a) of Section 12944 of the Government Code.

(d) The board shall work with the Office of Examination Resources or with an equivalent organization to develop the state jurisprudence examination to ensure that applicants for licensure are evaluated on their knowledge of applicable state laws and regulations.

(e) The board shall annually publish the pass and fail rates for the pharmacist's licensure examination administered pursuant to Section 4200, including a comparison of historical pass and fail rates before utilization of the North American Pharmacist Licensure Examination.

(f) The board shall report to the Joint Legislative Sunset Review Committee and the department as part of its next scheduled review, the pass rates of applicants who sat for the national examination compared with the pass rates of applicants who sat for the prior state examination. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.

SEC. 11. Section 4200.4 is added to the Business and Professions Code, to read:

4200.4. An applicant who fails the national examination may not retake the examination for at least 90 days or for a period established by regulations adopted by the board in consultation with the Office of Examination Resources of the department.

SEC. 12. Section 4202 of the Business and Professions Code is amended to read:

4202. (a) An applicant for registration as a pharmacy technician shall be issued a certificate of registration if he or she is a high school graduate or possesses a general education development equivalent, and meets any one of the following requirements:

(1) Has obtained an associate's degree in pharmacy technology.

(2) Has completed a course of training specified by the board.

(3) Has graduated from a school of pharmacy accredited by the American Council on Pharmaceutical Education or a school of pharmacy recognized by the board. Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician certificate of registration must be returned to the board within 15 days.

(4) Is certified by the Pharmacy Technician Certification Board.

(b) The board shall adopt regulations pursuant to this section for the registration of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for registration as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of registration, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.

SEC. 13. Section 4312 of the Business and Professions Code is amended to read:

4312. (a) The board may cancel the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer if the licensed

premises remain closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may cancel a license after a shorter period of closure. To cancel a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If a written objection is not received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may cancel the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer is cancelled pursuant to subdivision (a) or revoked pursuant to Article 19 (commencing with Section 4300), or a wholesaler, pharmacy, or veterinary food-animal drug retailer notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a wholesaler, pharmacy, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, or veterinary food-animal drug retailer is located, authorizing the board to enter the wholesaler, pharmacy, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) If a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, ''closed'' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

SEC. 14. Section 4314 is added to the Business and Professions Code, to read:

4314. (a) The board may issue citations containing fines and orders of abatement for any violation of this chapter or regulations adopted pursuant to this chapter, in accordance with Sections 125.9, 148, and 4005 and the regulations adopted pursuant to those sections.

(b) Where appropriate, a citation issued by the board, as specified in this section, may subject the person or entity to whom the citation is issued to an administrative fine.

(c) Notwithstanding any other provision of law, where appropriate, a citation issued by the board may contain an order of abatement. The order of abatement shall fix a reasonable time for abatement of the violation. It may also require the person or entity to whom the citation is issued to demonstrate how future compliance with the Pharmacy Law, and the regulations adopted pursuant thereto, will be accomplished. A demonstration may include, but is not limited to, submission of a corrective action plan, and requiring completion of up to six hours of continuing education courses in the subject matter specified in the order of abatement. Any continuing education courses required by the order of abatement shall be in addition to those required for license renewal.

(d) Nothing in this section shall in any way limit the board from issuing a citation, fine, and order of abatement pursuant to Section 4067

or Section 56.36 of the Civil Code, and the regulations adopted pursuant to those sections.

SEC. 15. Section 4315 is added to the Business and Professions Code, to read:

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with this chapter or regulations adopted pursuant to this chapter, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available on the pharmacy premises a copy of the letter of admonishment and corrective action plan for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775, 1775.15, 1777, or 1778 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

SEC. 16. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for the pharmacist application and examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(d) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(f) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(h) The fee for application and investigation for an exemptee license under Section 4053 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(i) The fee for an exemptee license and annual renewal under Section 4053 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(j) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(k) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(*l*) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(m) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(n) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(o) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(p) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(q) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(r) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board

Contingent Fund equal to approximately one year's operating expenditures.

(s) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(t) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(u) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(v) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

SEC. 17. Section 4403 of the Business and Professions Code is amended to read:

4403. The board shall not reissue or renew any license without the payment of the fees required by this chapter and the payment of all fees that are delinquent at the time that the application is made.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 540

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency

shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she

was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and

a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of

the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The

court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other

criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she

has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or

juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to

update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense

against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of

the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary

to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and

consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the

annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person

is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted

commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice

shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted

probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement

agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position,

drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is

of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community

college. "Designated law enforcement entity" shall also mean the police department of any school district, as defined in subdivision (b) of Section 830.32, except that nothing in this subdivision shall authorize these departments to make disclosures about registrants intended to reach persons beyond the school community.

(J) "School community" means those persons present at, those persons regularly frequenting, and the parents of any student attending, a school providing instruction in kindergarten or grades 1 to 12, inclusive, or any place associated with one of these schools. A place associated with a school includes campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the school for educational instruction, business, or school events; and public areas contiguous to any school or facility that are frequented by students, employees, or volunteers of the school.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an

unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar

year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found

guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department

shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the

Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The

preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice

shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the

information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285,

286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted

commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice

shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted

probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement

agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. (a) Section 1.1 of this bill incorporate amendments to Sections 290 of the Penal Code proposed by both this bill and SB 356. 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 290 of the Penal Code, and (3) SB 879 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 356, in which case Sections 1, 1.2, 1.3, of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1313. 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 290 of the Penal Code, (3) SB 356 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1313 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative, and Section 290.45 of the Penal Code, as proposed to be added by Section 4 of AB 1313,

shall become operative, and Section 4.1 of AB 1313 shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 356, and AB 1313. 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 290 of the Penal Code, and (3) this bill is enacted after SB 356 and AB 1313, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative, and Section 290.45 of the Penal Code, as proposed to be added by Section 4.1 of AB 1313, shall become operative, and Section 4 of AB 1313 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 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 541

An act to amend Sections 11106 and 12051 of the Penal Code, relating to licenses to carry firearms.

[Approved by Governor September 25, 2003. Filed with Secretary of State September 26, 2003.]

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (c), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall

keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers referred to in Section 11105.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not handguns, from forms submitted pursuant to Section 12084 for firearms that are not handguns, or from dealers' records of sales for firearms that are not handguns. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not handguns, or of the dealers' records of sales for firearms that are not handguns shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not handguns shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not handguns unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to handguns and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular handgun as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement

Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular handgun and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular handgun acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular handgun.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

SEC. 2. Section 12051 of the Penal Code is amended to read:

12051. (a) (1) The standard application form for licenses described in paragraph (3) shall require information from the applicant including, but not limited to, the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Applications for licenses shall be filed in writing, and signed by the applicant. Any license issued upon the application shall set forth the licensee's name, occupation, residence and business address, his or her age, height, weight, color of eyes and hair, the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of

the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

(2) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to subdivision (f) of Section 12050 and the reason for desiring the amendment.

(3) (A) Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs' Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license.

(B) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(C) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subparagraph (A), except to clarify or interpret information provided by the applicant on the standard application form.

(D) The standard application form described in subparagraph (A) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor.

(c) Any person who knowingly makes a false statement on the application regarding any of the following shall be guilty of a felony:

(1) The denial or revocation of a license, or the denial of an amendment to a license, issued pursuant to Section 12050.

(2) A criminal conviction.

(3) A finding of not guilty by reason of insanity.

(4) The use of a controlled substance.

(5) A dishonorable discharge from military service.

(6) A commitment to a mental institution.

(7) A renunciation of United States citizenship.

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CHAPTER 542

An act to amend Section 1942.5 of, and to add Section 1940.2 to, the Civil Code, relating to landlord and tenant.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 1940.2 is added to the Civil Code, to read:

1940.2. (a) It is unlawful for a landlord to do any of the following for the purpose of influencing a tenant to vacate a dwelling:

(1) Engage in conduct that violates subdivision (a) of Section 484 of the Penal Code.

(2) Engage in conduct that violates Section 518 of the Penal Code.

(3) Use, or threaten to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in violation of Section 1927 that would create an apprehension of harm in a reasonable person. Nothing in this paragraph requires a tenant to be actually or constructively evicted in order to obtain relief.

(4) Commit a significant and intentional violation of Section 1954.

(b) A tenant who prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to a civil penalty in an amount not to exceed two thousand dollars ($2,000) for each violation.

(c) An oral or written warning notice, given in good faith, regarding conduct by a tenant, occupant, or guest that violates, may violate, or violated the applicable rental agreement, rules, regulations, lease, or laws, is not a violation of this section. An oral or written explanation of the rental agreement, rules, regulations, lease, or laws given in the normal course of business is not a violation of this section.

(d) Nothing in this section shall enlarge or diminish a landlord's right to terminate a tenancy pursuant to existing state or local law; nor shall this section enlarge or diminish any ability of local government to regulate or enforce a prohibition against a landlord's harassment of a tenant.

SEC. 2. Section 1942.5 of the Civil Code is amended to read:

1942.5. (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or

proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenantability.

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability.

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability.

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke subdivision (a) more than once in any 12-month period.

(c) It is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in

subdivision (a) or (c). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.

(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

CHAPTER 543

An act to amend Section 368 of the Penal Code, relating to crime.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand

dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money,

labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, ''elder'' means any person who is 65 years of age or older.

(h) As used in this section, ''dependent adult'' means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. ''Dependent adult'' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, ''caretaker'' means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 544

An act to amend Section 4076 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or the physician assistant who functions pursuant to Section 3502.1 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber and, if applicable, the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or the physician assistant who functions pursuant to Section 3502.1.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or the physician assistant who functions pursuant to Section 3502.1.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

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 545

An act to amend Section 9757.5 of the Welfare and Institutions Code, relating to health insurance.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 9757.5 of the Welfare and Institutions Code is amended to read:

9757.5. (a) The California Department of Aging shall assess annually a fee of not less than seventy cents ($0.70), but not more than one dollar and twenty cents ($1.20), on a health care service plan for each person enrolled in a health care service plan as of December 31 of the previous year under a prepaid Medicare program that serves Medicare eligible beneficiaries within the state, and on a health care service plan for each enrollee under a Medicare supplement contract, including a Medicare Select contract, as of December 31 of the previous year, to offset the cost of counseling Medicare eligible beneficiaries on the benefits and programs available through health maintenance organizations instead of the traditional Medicare provider system.

(b) All fees collected pursuant to this section shall be deposited into the State HICAP Fund for the implementation of the Health Insurance Counseling and Advocacy Program, and shall be available for expenditure for activities as specified in Section 9541 when appropriated by the Legislature.

(c) The department may use up to 7 percent of the fee collected pursuant to subdivision (a) for the administration, assessment, and collection of that fee.

(d) It is the intent of the Legislature, in enacting this act and funding the Health Insurance Counseling and Advocacy Program, to maintain a ratio of two dollars ($2) collected from the Insurance Fund to every one dollar ($1) collected pursuant to subdivision (a). This ratio shall be reviewed by the Department of Finance within 30 days of January 1, 1999, and biennially thereafter to examine changes in the demographics of Medicare imminent populations, including, but not limited to, the number of citizens residing in California 55 years of age and older, the number and average duration of counseling sessions performed by

counselors of the Health Insurance Counseling and Advocacy Program, particularly the number of counseling sessions regarding prepaid Medicare programs and counseling sessions regarding Medi-Gap programs, and the use of other long-term care and health-related products. Upon review, the Department of Finance shall make recommendations to the Joint Legislative Budget Committee regarding appropriate changes to the ratio of funding from the Insurance Fund and the fees collected pursuant to subdivision (a).

(e) It is the intent of the Legislature that the revenue raised from the fee assessed pursuant to subdivision (a), and according to the ratio established pursuant to subdivision (d), be used to partially offset and reduce the amount of revenue appropriated annually from the Insurance Fund for funding of the Health Insurance Counseling and Advocacy Program.

(f) There shall be established in the State Treasury a ''State HICAP Fund'' administered by the California Department of Aging for the purpose of collecting fee assessments described in subdivision (a), and for the sole purpose of funding the Health Insurance Counseling and Advocacy Program.

SEC. 2. It is the intent of the Legislature through this act that the assessments pursuant to Section 9757.5 for the 2004–05 fiscal year shall reflect the number of enrolled Medicare beneficiaries and fee changes as reflected in Section 1 of this act. It is further the intent of the Legislature through this act to provide funding from state sources for the Health Insurance Counseling and Advocacy Program in the 2004–05 fiscal year in an amount that is equivalent to the total funding provided for the Health Insurance Counseling and Advocacy Program in the 2002–03 fiscal year.

CHAPTER 546

An act to amend Sections 782, 786, 789.3, and 10509.9 of, and to add Sections 1668.1 and 1738.5 to, the Insurance Code, relating to unfair acts.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 782 of the Insurance Code is amended to read:

782. Any person violating the provisions of Sections 780 or 781 is guilty of a misdemeanor and punishable by a fine not exceeding one

thousand five hundred dollars ($1,500) or by imprisonment not exceeding six months.

SEC. 2. Section 786 of the Insurance Code is amended to read:

786. All disability insurance and life insurance policies and certificates offered for sale to individuals age 65 or older in California shall provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract, at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no contract had been issued. All premiums paid and any policy or membership fee shall be fully refunded to the applicant by the insurer or entity in a timely manner.

(a) For the purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

(b) If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(c) Each policy or certificate shall have a notice prominently printed in no less than 10-point uppercase type, on the cover page of the policy or certificate and the outline of coverage, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(d) In the event of any conflict between this section and Section 10127.10 with respect to life insurance, the provisions of Section 10127.10 shall prevail.

SEC. 3. Section 789.3 of the Insurance Code is amended to read:

789.3. (a) Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation.

(c) If the commissioner brings an action against a licensee pursuant to subdivision (a) or (b) and determines that the licensee may reasonably be expected to cause significant harm to seniors, the commissioner may

suspend his or her license pending the outcome of the hearing described in subdivision (c) of Section 789.

(d) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars ($10,000) for the first violation.

(e) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars ($30,000) and no more than three hundred thousand dollars ($300,000) for each violation.

(f) The commissioner may require rescission of any contract found to have been marketed, offered, or issued in violation of this article.

SEC. 4. Section 1668.1 is added to the Insurance Code, to read:

1668.1. In addition to the grounds set forth in Section 1668, the following acts shall constitute cause to suspend or revoke any permanent license issued pursuant to this chapter:

(a) The licensee has induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, or to any of the persons listed in subdivision (e).

(b) The licensee has induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision (e) a beneficiary under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy.

(c) The licensee has induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any intervivos or testamentary trust. However, if the licensee is also licensed as an attorney in any state, the licensee may be made a trustee under the terms of any intervivos or testamentary trust, provided that the licensee is not a seller of insurance to the trustor of the trust.

(d) The licensee, who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.

(e) Subdivisions (a) and (b) shall also apply if the licensee induces the client to provide the benefits in those subdivisions to the following people:

(1) A person who is related to the licensee by birth, marriage, or adoption.

(2) A person who is a friend or business acquaintance of the licensee.

(3) A person who is registered as a domestic partner of the licensee.

(f) This section shall not apply to situations in which the client is:

(1) A person related to the licensee by birth, marriage, or adoption.

(2) A person who is registered as a domestic partner of the licensee.

SEC. 5. Section 1738.5 is added to the Insurance Code, to read:

1738.5. A proceeding held pursuant to Section 1668, 1668.5, 1738, 1739, or 12921.8 that involves allegations of misconduct perpetrated against a person age 65 or over shall be held within 90 days after receipt by the department of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(a) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of any of these persons, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(b) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(c) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(d) A stipulation for continuance signed by all parties, or their authorized representatives, that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(e) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(f) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact, due to a conflicting and required appearance in a judicial matter if, when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict, with the request for continuance, is immediately communicated to the administrative law judge.

(g) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(h) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

SEC. 6. Section 10509.9 of the Insurance Code is amended to read:

10509.9. (a) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who violates this article is

liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation.

(b) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation.

(c) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars ($10,000) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars ($30,000) and no more than three hundred thousand dollars ($300,000) for each violation.

(e) After a hearing conducted in accordance with Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may suspend or revoke the license of any person or entity that violates this article.

(f) Nothing in this section shall be deemed to affect any other authority provided by law to the commissioner.

CHAPTER 547

An act to amend Sections 787, 1725.5, 10127.10, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, and 1749.8 to, the Insurance Code, relating to insurance.

[Approved by Governor September 27, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 787 of the Insurance Code is amended to read:

787. Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall prominently disclose that an agent may contact the applicant if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person.

(a) No insurer, agent, broker, solicitor, or other person or other entity shall solicit persons age 65 and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(b) For the purposes of this section, an advertisement includes envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity.

(c) Advertisements shall not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials, include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

(d) No advertisement may use the name of a state or political subdivision thereof in a policy name or description.

(e) No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the Social Security Administration.

(f) No advertisement may imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) No insurer may use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) No insurer, agent, broker, or other entity may solicit a particular class by use of advertisements which state or imply that the occupational

or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

(k) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale may use the terms ''seminar,'' ''class,'' ''informational meeting,'' or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words ''and insurance sales presentation'' immediately following those terms in the same type size and font as those terms.

SEC. 2. Section 789.9 is added to the Insurance Code, to read:

789.9. (a) In addition to any other reasons that a sale of an individual annuity to a senior may violate any provision of law, an annuity shall not be sold to a senior in any of the following circumstances:

(1) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:

(A) The purchaser's assets are equal to or less than the community spouse resource allowance established annually by the State Department of Health Services 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 senior would otherwise qualify for Medi-Cal.

(2) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, after the purchase of the annuity, the senior or the senior's spouse would not qualify for Medi-Cal.

(b) In the event that a fixed annuity specified in subdivision (a) is issued to a senior, the issuer shall rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity. This remedy shall be in addition to any other remedy that may be available.

SEC. 3. Section 789.10 is added to the Insurance Code, to read:

789.10. (a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

(b) Any person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in 14-point type:

''(1) During this visit or a followup visit, you will be given a sales presentation on the following [indicate all that apply]:

( ) Life insurance, including annuities

( ) Other insurance products [specify]: _____.

(2) You have the right to have other persons present at the meeting, including family members, financial advisors or attorneys.

(3) You have the right to end the meeting at any time.

(4) You have the right to contact the Department of Insurance for information, or to file a complaint. [The notice shall include the consumer assistance telephone numbers at the department]

(5) The following individuals will be coming to your home: [list all attendees, and insurance license information, if applicable]''

(c) Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a followup visit to sell insurance, if that is the case, and state all of the following information:

(1) The name and titles of all persons arriving at the senior's home.

(2) The name of the insurer represented by the person, if known.

(d) Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person's name, business address, telephone number, and any insurance license number.

(e) The persons attending a meeting with a senior shall end all discussions and leave the home of the senior immediately after being asked to leave by the senior.

(f) A person may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

SEC. 4. Section 1724 is added to the Insurance Code, to read:

1724. An agent, broker, or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation with an active member of the State Bar of California. For purposes of this section, ''commission or other compensation'' means pecuniary or nonpecuniary compensation of any kind relating to the sale or renewal of an insurance policy or certificate or an annuity, including, but not limited to, a bonus, gift, prize, award, or finder's fee.

SEC. 5. Section 1725.5 of the Insurance Code is amended to read:

1725.5. (a) For purposes of Sections 32.5, 1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every licensee shall prominently affix, type, or cause to be printed on business cards, written price quotations for insurance products, and print advertisements distributed exclusively in this state for insurance products its license

number in type the same size as any indicated telephone number, address, or fax number. If the licensee maintains more than one organization license, one of the organization license numbers is sufficient for compliance with this section.

(b) Effective January 1, 2005, for purposes of Sections 32.5, 1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every licensee shall prominently affix, type, or cause to be printed on business cards, written price quotations for insurance products, and print advertisements, distributed in this state for insurance products, the word ''Insurance'' in type size no smaller than the largest indicated telephone number.

(c) In the case of transactors, or agent and broker licensees, who are classified for licensing purposes as solicitors, working as exclusive employees of motor clubs, organizational licensee numbers shall be used.

(d) Any person in violation of this section shall be subject to a fine levied by the commissioner in the amount of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third and subsequent offenses. The penalty shall not exceed one thousand dollars ($1,000) for any one offense. These fines shall be deposited into the Insurance Fund.

(e) A separate penalty shall not be imposed upon each piece of printed material that fails to conform to the requirements of this section.

(f) If the commissioner finds that the failure of a licensee to comply with the provisions of subdivision (a) or (b) is due to reasonable cause or circumstance beyond the licensee's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the licensee may be relieved of the penalty in subdivision (d).

(g) A licensee seeking to be relieved of the penalty in subdivision (d) shall file with the department a statement with supporting documents setting forth the facts upon which the licensee bases its claims for relief.

(h) This section does not apply to any person or entity that is not currently required to be licensed by the department or that is exempted from licensure.

(i) This section does not apply to general advertisements of motor clubs that merely list insurance products as one of several services offered by the motor club, and do not provide any details of the insurance products.

(j) This section does not apply to life insurance policy illustrations required by Chapter 5.5 (commencing with Section 10509.950) of Part 2 of Division 2 or to life insurance cost indexes required by Chapter 5.6 (commencing with Section 10509.970) of Part 2 of Division 2.

(k) This section shall become operative January 1, 1997.

SEC. 6. Section 1749.8 is added to the Insurance Code, to read:

1749.8. (a) Effective January 1, 2005, every life agent who sells annuities shall satisfactorily complete eight hours of training prior to soliciting individual consumers in order to sell annuities.

(b) Effective January 1, 2005, every life agent who sells annuities shall satisfactorily complete four hours of training every two years prior to license renewal. For resident agents, this requirement shall be part of, and not in addition to, the continuing education requirements of Section 1749.3.

(c) The training required by this section shall be approved by the commissioner and shall consist of topics related to annuities, and California law, regulations, and requirements related to annuities, prohibited sales practices, the recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product, and fraudulent and unfair trade practices. Subject matter determined by the commissioner to be primarily intended to promote the sale or marketing of annuities shall not qualify for credit towards the training requirement. Any course or seminar that is disapproved under the provisions of this section shall be presumed invalid for credit towards the training requirement of this section unless it is approved in writing by the commissioner.

(d) The training requirements set forth in this section shall not apply to nonresident agents representing an insurer that is a direct response provider.

For the purposes of this section, ''direct response provider'' means an insurer that meets each of the following criteria:

(1) The insurer does not initiate telephone contact with insureds or prospective insureds.

(2) Agents of the insurer speak with insureds and prospective insureds only by telephone, and at the request of the insureds or prospective insureds.

(3) Agents of the insurer are assigned to speak with insureds or prospective insureds on a random basis, when contacted.

(4) Agents of the insurer are salaried and do not receive commissions for sales or referrals.

SEC. 7. Section 10127.10 of the Insurance Code is amended to read:

10127.10. (a) Every policy of individual life insurance and every individual annuity contract that is initially delivered or issued for delivery to a senior citizen in this state on and after July 1, 2004, shall have printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or agent from whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall be clearly stated on the notice

and this period shall be not less than 30 days. The insured may return the policy to the insurer by mail or otherwise at any time during the period specified in the notice. During the 30-day cancellation period, the premium for a variable annuity may be invested only in fixed-income investments and money-market funds, unless the investor specifically directs that the premium be invested in the mutual funds underlying the variable annuity contract. Return of the policy within the 30-day cancellation period shall have one of the following effects:

(1) In the case of individual life insurance policies and variable annuity contracts for which the owner has not directed that the premium be invested in the mutual funds underlying the contract during the cancellation period, return of the policy during the cancellation period shall have the effect of voiding the policy from the beginning, and the parties shall be in the same position as if no policy had been issued. All premiums paid and any policy fee paid for the policy shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy. The premium and policy fee shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy.

(2) In the case of a variable annuity for which the owner has directed that the premium be invested in the mutual funds underlying the contract during the 30-day cancellation period, cancellation shall entitle the owner to a refund of the account value. The account value shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the contract.

(b) This section applies to all individual policies issued or delivered to senior citizens in this state on or after January 1, 2004. All policies subject to this section which are in effect on January 1, 2003, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) Every individual life insurance policy and every individual annuity contract, other than variable contracts and modified guaranteed contracts, subject to this section, that is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

‘‘IMPORTANT

YOU HAVE PURCHASED A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR

LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.''

The phrase ''after 30 days, cancellation may result in a substantial penalty, known as a surrender charge'' may be deleted if the policy does not contain those charges or penalties.

(d) Every individual variable annuity contract, variable life insurance contract, or modified guaranteed contract subject to this section, that is delivered or issued for delivery in this state, shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

''IMPORTANT

YOU HAVE PURCHASED A VARIABLE ANNUITY CONTRACT (VARIABLE LIFE INSURANCE CONTRACT, OR MODIFIED GUARANTEED CONTRACT). CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT. DURING THAT 30-DAY PERIOD, YOUR MONEY WILL BE PLACED IN A FIXED ACCOUNT OR MONEY-MARKET FUND, UNLESS YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO UNDERLYING THE CONTRACT DURING THE 30-DAY PERIOD. IF YOU DO NOT DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO, AND IF YOU RETURN THE POLICY WITHIN THE 30-DAY PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE PREMIUM AND POLICY FEES. IF YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO DURING THE 30-DAY PERIOD, AND IF YOU RETURN THE POLICY DURING THAT PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE POLICY'S ACCOUNT VALUE ON THE DAY THE POLICY IS RECEIVED BY THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY, WHICH COULD BE LESS THAN THE PREMIUM YOU PAID FOR THE POLICY. A RETURN OF THE POLICY AFTER 30

DAYS MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.''

The words ''known as a surrender charge'' may be deleted if the contract does not contain those charges.

(e) This section does not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision contained in a policy. Additionally, this section shall not apply to contributory and noncontributory employer group life insurance, contributory and noncontributory employer group annuity contracts, and group term life insurance, with the exception of subdivision (f).

(f) When an insurer, its agent, group master policyowner, or association collects more than one month's premium from a senior citizen at the time of application or at the time of delivery of a group term life insurance policy or certificate, the insurer must provide the senior citizen a prorated refund of the premium if the senior citizen delivers a cancellation request to the insurer during the first 30 days of the policy period.

(g) For purposes of this chapter, a senior citizen means an individual who is 60 years of age or older on the date of purchase of the policy.

SEC. 8. Section 10509.8 of the Insurance Code is amended to read:

10509.8. (a) A violation of this article shall occur if an agent or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any, or recommends that an insured 65 years of age or older purchase an unnecessary replacement annuity.

(b) For purposes of this section, ''unnecessary replacement'' means the sale of an annuity to replace an existing annuity that requires that the insured will pay a surrender charge for the annuity that is being replaced and that does not confer a substantial financial benefit over the life of the policy to the purchaser so that a reasonable person would believe that the purchase is unnecessary.

(c) Patterns of action by policyowners who purchase replacement policies from the same agent after indicating on applications that replacement is not involved, shall constitute a rebuttable presumption of the agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall constitute a rebuttable presumption of the agent's intent to violate this article.

(d) This article does not prohibit the use of additional material other than that which is required that is not in violation of this article or any other statute or regulation.

CHAPTER 548

An act to amend Section 22171 of the Education Code, relating to state teachers' retirement.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 22171 of the Education Code is amended to read:

22171. (a) ''Spouse'' means a person who was continuously married to the member for the period beginning at least 12 months prior to the death of the member, unless a child is born to the member and his or her spouse within the 12-month period or unless the spouse is carrying the member's unborn child.

(b) ''Spouse'' also means a person who was married to the member for less than 12 months, if the member's death was accidental, or for the period beginning prior to the occurrence of the injury or diagnosis of the illness that resulted in death.

(1) A member's death is defined as accidental only if he or she received bodily injuries through violent, external, or accidental means and died as a direct result of the bodily injuries and independent of all other causes.

(2) This subdivision does not apply if, at the time of the marriage, the member could not have reasonably been expected to live for 12 months, due to a known illness.

CHAPTER 549

An act to amend Sections 1800 and 1805 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to professional corporations.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 1800 of the Business and Professions Code is amended to read:

1800. A dental corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, if that corporation, its shareholders, officers, directors, and employees rendering professional services who are dentists, physicians and surgeons, dental assistants, registered dental assistants, registered dental assistants in extended functions, registered dental hygienists, registered dental hygienists in extended functions, or registered dental hygienists in alternative practice are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and other statutes, rules, and regulations applicable to a dental corporation and the conduct of its affairs. Subject to all applicable statutes, rules, and regulations, a dental corporation is entitled to practice dentistry. With respect to a dental corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Dental Board of California.

SEC. 2. Section 1805 of the Business and Professions Code is amended to read:

1805. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each director, shareholder, and officer of a dental corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

SEC. 3. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.

(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(m) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

SEC. 4. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic Doctors.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic Doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.

(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.

(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physician and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

SEC. 5. Section 4 of this bill incorporates amendments to Section 13401.5 of the Corporations Code proposed by both this bill and SB 907. 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 13401.5 of the Corporations Code, and (3) this bill is enacted after SB 907, in which case Section 3 of this bill shall not become operative.

CHAPTER 550

An act to amend Sections 51890 and 51913 of the Education Code, relating to health education.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 51890 of the Education Code is amended to read:

51890. (a) For the purposes of this chapter, ''comprehensive health education programs'' are defined as all educational programs offered in kindergarten and grades 1 to 12, inclusive, in the public school system, including in-class and out-of-class activities designed to ensure that:

(1) Pupils will receive instruction to aid them in making decisions in matters of personal, family, and community health, to include the following subjects:

(A) The use of health care services and products.

(B) Mental and emotional health and development.

(C) Drug use and misuse, including the misuse of tobacco and alcohol.

(D) Family health and child development, including the legal and financial aspects and responsibilities of marriage and parenthood.

(E) Oral health, vision, and hearing.

(F) Nutrition, which may include related topics such as obesity and diabetes.

(G) Exercise, rest, and posture.

(H) Diseases and disorders, including sickle cell anemia and related genetic diseases and disorders.

(I) Environmental health and safety.

(J) Community health.

(2) To the maximum extent possible, the instruction in health is structured to provide comprehensive education in health that includes all the subjects in paragraph (1).

(3) The community actively participates in the teaching of health including classroom participation by practicing professional health and safety personnel in the community.

(4) Pupils gain appreciation for the importance and value of lifelong health and the need for each individual to take responsibility for his or her own health.

(5) School districts may voluntarily provide pupils with instruction on preventative health care, including obesity and diabetes prevention through nutrition education.

(b) Health care professionals, health care service plans, health care providers, and other entities participating in a voluntary initiative with a school district may not market their services when undertaking activities related to the initiative. For purposes of this subdivision, ''marketing'' is defined as making a communication about a product or service that is intended to encourage recipients of the communication to purchase or use the product or service. Health care or health education information provided in a brochure or pamphlet that contains the logo or name of a health care service plan or health care organization is not considered marketing if provided in coordination with the voluntary initiative. The marketing prohibitions contained in this subdivision do not apply to outreach, application assistance, and enrollment activities relating to federal, state, or county sponsored health care insurance programs that are conducted by health care professionals, health care service plans, health care providers, and other entities if the activities are conducted in compliance with the statutory, regulatory, and programmatic guidelines applicable to those programs.

SEC. 2. Section 51913 of the Education Code is amended to read:

51913. The plan for a comprehensive health education program shall include a statement setting forth the district's educational program for health education on a districtwide basis. The State Board of Education shall establish standards and criteria to be used in the evaluation of plans submitted by school districts. The standards and criteria for review and approval of plans by the State Board of Education shall include, but not be limited to, provision for:

(a) Assessment of the health educational needs of the pupils.

(b) Defined and measurable program objectives and methods of assessing the effectiveness of the program.

(c) Coordination of all district resources with the objectives of the plan.

(d) Utilization of health care professionals representing, at the school district's option, the varied fields of heath care, including voluntary collaborations with managed health care and health care providers; local public and private health, safety, and community service agencies; and other appropriate community resources in the development and implementation of the plan.

(e) Direct participation of health care professionals representing, at the school district's option, the varied fields of health care, including voluntary collaborations with managed health care, health care providers, and local public and private health, safety, and community service agencies in the course evaluation.

(f) Staff development and in-service training.

(g) Evaluation of the program by the governing board of the school district with the assistance of administrators, teachers, parents, pupils, and participants in the program from the community.

CHAPTER 551

An act to amend Section 12419.10 of the Government Code, relating to offset payments.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 12419.10 of the Government Code is amended to read:

12419.10. (a) (1) The Controller shall, to the extent feasible, offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owing the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law or from winnings in the California State Lottery. Standards and procedures for submission of requests for offsets shall be as prescribed by the Controller. Whenever insufficient funds are available to satisfy an offset request, the Controller, after first applying the amounts available to any amount due a state agency, may allocate the balance among any other requests for offset.

(2) Any request for an offset for a vehicle parking penalty shall be submitted within three years of the date the penalty was incurred. This three year maximum term for refund offsets for parking tickets applies to requests submitted to the Controller on or after January 1, 2004.

(b) Once an offset request for a vehicle parking penalty is made, a local agency may not accrue additional interest charges, collection charges, penalties, or other charges on or after the date that the offset request is made. Payment of an offset request for a vehicle parking penalty shall be made on the condition that it constitutes full and final payment of that offset.

(c) The Controller shall deduct and retain from any amount offset in favor of a city or county an amount sufficient to reimburse the Controller, the Franchise Tax Board, the California State Lottery, and the Department of Motor Vehicles for their administrative costs of processing the offset payment.

(d) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, or any other provision of law, the social security number of any person obtained pursuant to Section 4150, 4150.2, or 12800 of the Vehicle Code is not a public record and shall only be provided by the Department of Motor Vehicles to an authorized agency for the sole purpose of making an offset pursuant to this section for any unpaid vehicle parking penalty or any unpaid fine, penalty, assessment, or bail of which the Department of Motor Vehicles has been notified pursuant to subdivision (a) of Section 40509 of the Vehicle Code or Section 1803 of the Vehicle Code, responding to information requests from the Franchise Tax Board for the purpose of tax administration, and responding to requests 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. As used in this section, ''authorized agency'' means the Controller, the Franchise Tax Board, or the California Lottery Commission.

CHAPTER 552

An act to amend Sections 8206, 8206.1, 8206.6, 8261, 8263, 8805, 32211, 35160.5, 39831.5, 41344, 42285.2, 44505, 45037, 46201, 46202, 48916, 48918, 51224.5, 52055.640, 56343.5, 60040, and 81130.3 of, to add Section 56836.30 to, and to add Article 3 (commencing with Section 81050) to Chapter 1 of Part 49 of, and to repeal Sections 8206.5, 8206.7, 8206.8, 17912.1, 45357, 45358, 51132, 51882, 62006, 62007, and 62008 of, the Education Code, to amend Section 19050.8 of the Government Code, to add Section 97.45 to the Revenue and Taxation Code, to amend Section 45 of Chapter 1167 of the Statutes of 2002, and to amend Section 7 of Chapter 1 of the Statutes of 2003, relating to education.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 8206 of the Education Code is amended to read:

8206. (a) The State Department of Education is hereby designated as the single state agency responsible for the promotion, development, and provision of care of children in the absence of their parents during

the workday or while engaged in other activities which require assistance of a third party or parties. The department shall administer the federal Child Care and Development Fund.

(b) For purposes of this section, ''Child Care and Development Fund'' has the same meaning as in Section 98.2 of Title 45 of the Code of Federal Regulations.

SEC. 2. Section 8206.1 of the Education Code is amended to read:

8206.1. (a) The Superintendent of Public Instruction shall collaborate with the Secretary for Education and the Secretary of Health and Human Services, with the advice and assistance of the Child Development Programs Advisory Committee, in the development of the state plan required pursuant to the federal Child Care and Development Fund, prior to submitting or reporting on that plan to the federal Secretary of Health and Human Services.

(b) (1) For purposes of this section, ''Child Care and Development Fund'' has the same meaning as in Section 98.2 of Title 45 of the Code of Federal Regulations.

(2) For the purposes of this section, ''collaborate'' means to cooperate with and to consult with.

SEC. 3. Section 8206.5 of the Education Code is repealed.

SEC. 4. Section 8206.6 of the Education Code is amended to read:

8206.6. It is the intent of the Legislature that federal funds received pursuant to the federal Child Care and Development Fund be allocated according to federal regulations. For purposes of this section, ''Child Care and Development Fund'' has the same meaning as in Section 98.2 of Title 45 of the Code of Federal Regulations.

SEC. 5. Section 8206.7 of the Education Code is repealed.

SEC. 6. Section 8206.8 of the Education Code is repealed.

SEC. 7. Section 8261 of the Education Code is amended to read:

8261. (a) The Superintendent of Public Instruction shall adopt rules and regulations pursuant to this chapter. The rules and regulations shall include, but not be limited to, provisions which do all of the following:

(1) Provide clear guidelines for the selection of agencies when child development contracts are let, including, but not limited to, specification that any agency headquartered in the proposed service area on January 1, 1985, will be given priority for a new contract in that area, unless the State Department of Education makes a written determination that (A) the agency is not able to deliver the level of services specified in the request for proposal, or (B) the department has notified the agency that it is not in compliance with the terms of its contract.

(2) Provide for a contract monitoring system to ensure that agencies expend funds received pursuant to this chapter in accordance with the provisions of their contracts.

(3) Specify adequate standards of agency performance.

(4) Establish reporting requirements for service reports, including provisions for varying the frequency with which these reports are to be submitted on the basis of agency performance.

(5) Specify standards for withholding payments to agencies that fail to submit required fiscal reports.

(6) Set forth standards for department site visits to contracting agencies, including, but not limited to, specification as to the purpose of the visits, the personnel that will perform these visits, and the frequency of these visits which shall be as frequently as staff and budget resources permit. By September 1 of each year, the department shall report to the Senate Education, Senate Health and Human Services, Assembly Education, and Assembly Human Services Committees on the number of visits conducted during the previous fiscal year pursuant to this paragraph.

(b) The superintendent shall consult with the State Department of Social Services with respect to rules and regulations adopted relative to the disbursal of federal funds under Title XX of the federal Social Security Act.

(c) For purposes of expediting the implementation of state or federal legislation to expand child care services, the superintendent may waive (1) the regulations regarding the point qualifications for, and the process and scoring of, interviews of contract applicants pursuant to Section 18002 of Title 5 of the California Code of Regulations, or (2) the time limitations for scheduling and notification of appeal hearings and their results pursuant to Section 18003 of Title 5 of the California Code of Regulations. The superintendent shall ensure that the appeal hearings provided for in Section 18003 of Title 5 of the California Code of Regulations are conducted in a timely manner.

(d) (1) Child care and development programs operated under contract from funds made available pursuant to the federal Child Care and Development Fund, shall be administered according to Division 19 (commencing with Section 17906) of Chapter 1 of Title 5 of the California Code of Regulations, unless provisions of these regulations conflict with federal regulations. If state and federal regulations conflict, the federal regulations shall apply unless a waiver of federal regulations is authorized.

(2) For purposes of this section, ''Child Care and Development Fund'' has the same meaning as in Section 98.2 of Title 45 of the Code of Federal Regulations.

SEC. 8. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state

subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family needs the child care service because (A) the child is identified by a legal, medical, social service agency, or emergency shelter as (i) a recipient of protective services or (ii) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (B) because the parents are (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated.

(b) Except as provided in Article 15.5 (commencing with Section 8350), priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. If an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has a child with exceptional needs shall be admitted first. If there is no family of the same priority with a child with special needs, the same priority family that has been on the waiting list for the longest time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for and may grant specific waivers of the priorities established in this subdivision for agencies that wish to serve specific populations, including children with exceptional needs or children of prisoners. These new waivers may not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and

development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because of a parent or guardian having filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill children or children with exceptional needs.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter. The income of a recipient of federal supplemental security income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) and state supplemental program benefits pursuant to Title XVI of the federal Social Security Act and Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code may not be included as income for the purposes of determining the amount of the family fee. The fee schedule shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. Federal or state money may not be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars ($25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. Adverse action may not be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) Public funds may not be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

SEC. 9. Section 8805 of the Education Code is amended to read:

8805. The Legislature finds that an evaluation of plan effectiveness is both desirable and necessary, and accordingly requires the following:

(a) No later than January 1 of the year following a full year of operation, each local educational agency or consortium that receives an operational grant under this chapter shall submit a report to the superintendent that includes:

(1) An assessment of the effectiveness of that local educational agency or consortium in achieving stated goals in the planning and/or operational phase.

(2) Problems encountered in the design and operation of the Healthy Start Support Services for Children Grant Program plan, including identification of any federal, state, or local statute or regulation that will impede program implementation.

(3) Recommendations for ways to improve delivery of support services to pupils.

(4) The number of pupils who will receive support services who previously have not been served.

(5) The potential impact of the program on the local educational agency or the consortium, including any anticipated increase in school retention and achievement rates of pupils who receive support services.

(6) An accounting of anticipated local budget savings, if any, resulting from the implementation of the program.

(7) Client and practitioner satisfaction.

(8) The ability, or anticipated ability, to continue to provide services in the absence of future funding under this chapter, by allocating resources in ways that are different from existing methods.

(9) Increased access to services for pupils and their families.

(10) The degree of increased collaboration among participating agencies and private partners.

(11) If the local educational agency or consortium received certification as a Medi-Cal provider, the extent to which the certification improved access to needed services.

(b) Additional annual evaluations may be required as designated by the superintendent.

SEC. 10. Section 17912.1 of the Education Code is repealed.

SEC. 11. Section 32211 of the Education Code is amended to read:

32211. (a) Any person who is not a pupil of the public school, a parent or guardian of a pupil of the public school, or an officer or employee of the school district maintaining the public school, or who is not required by his or her employment to be in a public school building or on the grounds of the public school, and who has entered any public school building or the grounds of any public school, during school hours, and who is requested either by the principal of the public school or by the designee of the principal to leave a public school building or

public school grounds, shall promptly depart therefrom and shall not return thereto for at least seven days. A request that a person depart from a public school building or public school grounds shall be made by the principal, or the designee of the principal, exclusively on the basis that it appears reasonable to the principal, or the designee of the principal to conclude that the continued presence of the person requested to depart would be disruptive of, or would interfere with, classes or other activities of the public school program.

(b) Any person who fails to leave a public school building or public school grounds promptly upon request of the principal of the public school or the designee of the principal made pursuant to subdivision (a) or who, after leaving a public school building or public school grounds pursuant to a request of the principal of the public school, or the designee of the principal, made pursuant to subdivision (a), returns thereto, except pursuant to subdivision (d), within seven days, is guilty of a misdemeanor and shall be punished pursuant to Section 626.8 of the Penal Code.

(c) Any person who is requested pursuant to subdivision (a) to leave a public school building or school grounds may appeal to the superintendent of the school district in which the public school is located. That appeal shall be made not later than the second succeeding schoolday after the person has departed from the public school building or public school grounds. The superintendent shall, after reviewing the matter with the principal, or the designee of the principal, and the person seeking ingress to the public school during school hours, render his or her decision within 24 hours after the appeal is made, and the decision shall be binding upon both parties. A decision of the superintendent may be appealed by the person seeking ingress to the public school during public school hours to the governing board of the school district in which the public school is located. That appeal shall be made not later than the second succeeding schoolday after the superintendent has rendered his or her decision. The governing board of the school district shall consider and decide the appeal at its next scheduled regular or adjourned regular public meeting, and the decision of the governing board shall be final.

(d) Where the office of the superintendent of the school district or the office of the governing board of the school district is situated in the public school building or on the grounds of the public school from which a person has been requested, pursuant to subdivision (a), to depart, the person may enter the public school building or the grounds of the public school solely for the purpose of, and only to the extent necessary for, personally making, at the office of the superintendent or the office of the governing board, an appeal pursuant to subdivision (c).

(e) The governing board of every school district shall cause to have posted at every entrance to each school and grounds of the district a

notice which shall set forth ''school hours,'' which are hereby defined for the purposes of this section as the period commencing one hour before classes begin and one hour after classes end at any school, or as otherwise defined by the governing board of the school district.

(f) For the purposes of subdivision (a), a representative of a school employee organization engaged in activities related to representation, as defined by Section 7104, shall be deemed to be a person required by his or her employment to be in a school building or on the grounds of a school.

(g) Nothing in this section shall be construed as preempting any ordinance of any city, county, or city and county.

SEC. 12. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period.

(1) For purposes of this subdivision, ''extracurricular activity'' means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an ''extracurricular activity'' is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a ''cocurricular activity'' is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course that satisfies the entrance requirements for admission to the California State University or the University of California is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, ''satisfactory educational progress'' shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, ''previous grading period'' does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, ''previous grading period'' is deemed to mean the grading period immediately prior to the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(b) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade levels.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parent or guardian of each schoolage child who is a resident in the district may select the schools the child shall

attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the capacity of the schools in its district. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) Notwithstanding the requirement of subparagraph (B) of paragraph (2) that the policy include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that the selection is made through a random, unbiased process, the policy may include any of the following elements:

(A) It may provide that special circumstances exist that might be harmful or dangerous to a particular pupil in the current attendance area of the pupil, including, but not limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a basis for granting a priority of attendance outside the current attendance area of the pupil. A finding of harmful or dangerous special circumstances shall be based upon either of the following:

(i) A written statement from a representative of the appropriate state or local agency, including, but not limited to, a law enforcement official or a social worker, or properly licensed or registered professionals, including, but not limited to, psychiatrists, psychologists, or marriage and family therapists.

(ii) A court order, including a temporary restraining order and injunction, issued by a judge.

A finding of harmful or dangerous special circumstances pursuant to this subparagraph may be used by a school district to approve transfers within the district to schools that have been deemed by the school district

to be at capacity and otherwise closed to transfers that are not based on harmful or dangerous special circumstances.

(B) It may provide that any pupil attending a school prior to July 1, 1994, may be considered a current resident of that school for purposes of this section until the pupil is promoted or graduates from that school.

(C) It may provide that no pupil who was on a waiting list for a school or specialized program, on or before July 1, 1994, pursuant to a then-existing district policy on transfers within the district, shall be displaced by pupils transferring after July 1, 1994, from outside the attendance area, as long as the continued maintenance on a waiting list remains consistent with the former policy.

(D) It may provide that schools receiving requests for admission shall give priority for attendance to siblings of pupils already in attendance in that school and to pupils whose parent or legal guardian is assigned to that school as his or her primary place of employment.

(E) It may include a process by which the school district informs parents or guardians that certain schools or grade levels within a school are currently, or are likely to be, at capacity and, therefore, those schools or grade levels are unable to accommodate any new pupils under the open enrollment policy.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 13. Section 39831.5 of the Education Code is amended to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

(A) A list of schoolbus stops near each pupil's home.

(B) General rules of conduct at schoolbus loading zones.

(C) Red light crossing instructions.

(D) Schoolbus danger zone.

(E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems, when a passenger restraint system is installed, shall include, but not be limited to, all of the following:

(A) Proper fastening and release of the passenger restraint system.

(B) Acceptable placement of passenger restraint systems on pupils.

(C) Times at which the passenger restraint systems should be fastened and released.

(D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

(1) Name of school district, county office of education, or private school.

(2) Name and location of school.

(3) Date of instruction.

(4) Names of supervising adults.

(5) Number of pupils participating.

(6) Grade levels of pupils.

(7) Subjects covered in instruction.

(8) Amount of time taken for instruction.

(9) Busdriver's name.

(10) Bus number.

(11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 14. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees, shall jointly establish a plan for repayment of state school funds that the local educational agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. A local educational agency shall request a repayment plan within 90 days of receiving the final audit report or review, within 30 days of receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local educational agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) of this section or subdivision (d) of Section 41344.1 applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local educational agency on the basis of average daily attendance, or other data, reported by the local educational agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a repayment plan, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average

daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(2) Commencing with the 1999–2000 fiscal year, this subdivision may not result in a local educational agency repaying more than the value of the average daily attendance disallowed in the audit exception plus interest and other penalties or reductions in apportionments as provided by existing law.

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local educational agency receives a final audit report resulting from an audit or review or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1, a local educational agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local educational agency may present evidence or arguments if the local educational agency believes that the final report contains any finding that was based on errors of fact or interpretation of law. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local educational agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, ''audit or review'' means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accounting firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local educational agency with an opportunity to provide a written response.

SEC. 15. Section 42285.2 of the Education Code is amended to read:

42285.2. (a) Notwithstanding any other provision of law, the Coachella Valley Unified School District is eligible to receive apportionments for the Sea View Elementary School and for the West Shores High School pursuant to the schedule for necessary small high schools set forth in Section 42284.

(b) If the amount of average daily attendance of either school exceeds 286, then that school shall no longer be entitled to receive apportionments as set forth in this section.

(c) Notwithstanding any other provision of the law, the Department of Transportation shall notify the Legislature and the Secretary of State upon completion of California Department of Transportation Project

Number 11-RIV-86, P.M. R22.0, 179800. After notification to the Legislature and the Secretary of State has occurred, this section shall remain in effect only until the July 1 after the then current fiscal year has elapsed or June 30, 2005, whichever is later, and as of the later of those dates this section is repealed.

SEC. 16. Section 44505 of the Education Code is amended to read:

44505. (a) Between July 1, 1999, and June 30, 2000, a school district may notify the Superintendent of Public Instruction that it plans to implement, commencing July 1, 2000, a Peer Assistance and Review Program for Teachers pursuant to this article. Upon receipt of the notification by the school district, the Superintendent of Public Instruction shall apportion to the school district two thousand eight hundred dollars ($2,800) or an amount equal to the number of mentor teachers that the state calculated the school district is entitled to in the 1999–2000 fiscal year pursuant to Article 4 (commencing with Section 44490) multiplied by two thousand eight hundred dollars ($2,800), whichever is greater.

(b) A school district that notifies the Superintendent of Public Instruction that it plans to implement a Peer Assistance and Review Program for Teachers by July 1, 2000, pursuant to subdivision (a), shall certify to the Superintendent of Public Instruction that it has implemented a program by August 1, 2000. In addition to the certification, the Superintendent of Public Instruction may request a copy of the signature page of the collective bargaining agreement implementing the program required pursuant to subdivision (a) of Section 44503. A school district that fails to provide the required certification is not eligible to receive an apportionment for the Peer Assistance and Review Program for Teachers pursuant to subdivision (a) of this section or subdivision (a) of Section 44498 in the 2000–01 school year, or in any year thereafter. The school district, however, may be eligible to receive an apportionment for the Peer Assistance and Review Program for Teachers pursuant to subdivision (c) of this section and subdivision (a) of Section 44498 in the 2000–01 school year, and in each year thereafter, if the school district complies with the requirements set forth in subdivisions (c) and (d).

(c) Between July 1, 2000, and May 31, 2001, a school district may notify the Superintendent of Public Instruction that it plans to implement, commencing July 1, 2001, a Peer Assistance and Review Program for Teachers pursuant to this article. On or before June 29, 2001, the Superintendent of Public Instruction shall apportion to every school district that provides this notification an amount equal to the number of mentor teachers that the state calculated the school district is entitled to in the 1999–2000 school year pursuant to Article 4 (commencing with Section 44490) times a maximum of one thousand

dollars ($1,000). Any school district that provides this notification shall receive at least the amount that would be received pursuant to this section by a school district with one state funded mentor in the 2000–01 school year pursuant to Article 4 (commencing with Section 44490).

(d) A school district that notifies the Superintendent of Public Instruction that it plans to implement a Peer Assistance and Review Program for Teachers by July 1, 2001, pursuant to subdivision (c), shall certify to the Superintendent of Public Instruction that it has implemented a program by July 1, 2001. In addition to the certification, the Superintendent of Public Instruction may request a copy of the signature page of the collective bargaining agreement implementing the program required pursuant to subdivision (a) of Section 44503. A school district that fails to provide the required certification is not eligible for any apportionment for the Peer Assistance and Review Program for Teachers received pursuant to subdivision (c) of this section, and subdivision (a) of Section 44498 in the 2001–02 school year, or in any year thereafter.

(e) The funding provided pursuant to subdivisions (a) and (c) of this section and subdivision (a) of Section 44498 shall be provided to eligible school districts in each year that the school operates a Peer Assistance and Review Program for Teachers.

(f) The maximum amount of funds available for apportionment to school districts by the Superintendent of Public Instruction for allocation pursuant to subdivision (c) shall be the amount appropriated pursuant to subdivision (a) of Section 6 of the act adding this section, minus any funds apportioned by the Superintendent of Public Instruction to school districts pursuant to subdivision (a) as of June 30, 2000.

(g) A school district may use funds apportioned pursuant to this section for activities necessary to implement the Peer Assistance and Review Program for Teachers.

SEC. 17. Section 45037 of the Education Code is amended to read:

45037. (a) Except as provided in Section 45036, for the fiscal year 2001–02 and for any fiscal year thereafter in which a person renders service as a teacher in kindergarten or any of grades 1 to 12, inclusive, who does not have a valid certification document, the school district or county office of education in which the person is employed shall be assessed a penalty that shall be in lieu of any loss of funding that would otherwise result under Chapter 6.10 (commencing with Section 52120) of Part 28. The penalty shall be calculated as provided in subdivision (b) and withheld from state funding otherwise due to the district or county office of education.

(1) Notwithstanding Section 46300, the attendance of the noncertificated person's pupils during the period of service shall be included in the computation of average daily attendance.

(2) The noncertificated person's period of service shall not be excluded from the determination of eligibility for incentive funding for a longer instructional day or year, or both, pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(b) (1) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, add the total number of schooldays on which the person rendered any amount of the service.

(2) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, for a period of service during which the person did not have a valid certification document, add the number of schooldays on which the person rendered any amount of the service without a valid certification document.

(3) Divide the number determined in paragraph (2) by the number determined in paragraph (1) and carry the result to four decimal places.

(4) Multiply a school district's revenue limit entitlement for the fiscal year, calculated pursuant to Section 42238, or it's funding amount calculated pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24, as applicable, or a county office of education's funding for the fiscal year, for the program in which the noncertificated person rendered service by the number determined in paragraph (3).

(c) Beginning in 2002–03, if a county office of education releases a warrant in favor of a person for whom a period of school district service is included in the calculation set forth in paragraph (2) of subdivision (b), the county office shall be assessed a penalty. The penalty assessed to a county office for any fiscal year in which one or more district teachers did not have a valid certification document shall be equal to the lesser of three amounts as follows:

(1) Fifty percent of all penalties assessed for that fiscal year to all school districts in the county office's jurisdiction pursuant to subdivision (b).

(2) One-half percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when two or fewer districts in the county office's jurisdiction are subject to penalties pursuant to subdivision (b).

(3) One percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when three

or more districts in the county office's jurisdiction are subject to penalties pursuant to subdivision (b).

(d) Nothing in this section may be waived in whole or in any part.

SEC. 18. Section 45357 of the Education Code is repealed.

SEC. 19. Section 45358 of the Education Code is repealed.

SEC. 20. Section 46201 of the Education Code is amended to read:

46201. (a) In each of the 1984–85, 1985–86, and 1986–87 fiscal years, for each school district that certifies to the Superintendent of Public Instruction that it offers at least the amount of instructional time specified in this subdivision at a grade level or levels, the Superintendent of Public Instruction shall determine an amount equal to twenty dollars ($20) per unit of current year second principal apportionment regular average daily attendance in kindergarten and grades 1 to 8, inclusive, and forty dollars ($40) per unit of current year second principal apportionment regular average daily attendance in grades 9 to 12, inclusive. This section shall not apply to adult average daily attendance, the average daily attendance for pupils attending summer schools, alternative schools, regional occupational centers and programs, continuation high schools, or opportunity schools, and the attendance of pupils while participating in community college or independent study programs.

(1) In the 1984–85 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) One-third of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(2) In the 1985–86 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) Two-thirds of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(3) In the 1986–87 fiscal year:

(A) Thirty-six thousand minutes in kindergarten.

(B) Fifty thousand four hundred minutes in grades 1 to 3, inclusive.

(C) Fifty-four thousand minutes in grades 4 to 8, inclusive.

(D) Sixty-four thousand eight hundred minutes in grades 9 to 12, inclusive.

(4) In any fiscal year, each school district that receives an apportionment pursuant to subdivision (a) for average daily attendance in grades 9 to 12, inclusive, shall offer a program of instruction that allows each student to receive at least 24 course years of instruction, or the equivalent, during grades 9 to 12, inclusive.

(5) For any schoolsite at which programs are operated in more than one of the grade levels enumerated in subparagraph (B) or (C) of paragraph (3), the school district may calculate a weighted average of minutes for those grade levels at that schoolsite for purposes of making the certification authorized by this subdivision.

(b) (1) If any of the amounts of instructional time specified in paragraph (3) of subdivision (a) is a lesser number of minutes for that grade level than actually provided by the district in the same grade in the 1982–83 fiscal year, the 1982–83 fiscal year number of minutes for that grade level, adjusted to comply with Section 46111, shall instead be the requirement for the purposes of paragraphs (1), (2), and (3) of subdivision (a). Commencing with the 1990–91 fiscal year, and each fiscal year through the 1995–96 fiscal year, any school district subject to this subdivision that does not maintain the number of instructional minutes for a particular grade level that the school district maintained for the 1982–83 fiscal year, adjusted to comply with Section 46111, shall not be subject to paragraphs (1) to (3), inclusive, of subdivision (c) if that school district maintains at least the minimum number of instructional minutes for each grade level set forth in paragraph (3) of subdivision (a) in the 1990–91 fiscal year and each fiscal year through the 1994–95 fiscal year or the 1995–96 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, and thereafter returns to the number of instructional minutes maintained for each grade level in the 1982–83 fiscal year.

(2) The Legislature finds and declares that the school districts to which paragraph (1) is applicable have not offered any less instructional time than is required of all other school districts and therefore should not be forced to pay any penalty.

(c) (1) For any school district that receives an apportionment pursuant to subdivision (a) in the 1984–85 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1985–86 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1985–86 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1985–86 fiscal year and fiscal years thereafter.

(2) For each school district that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1986–87 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

(3) For each school district that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (3) of subdivision (a) in the 1987–88 fiscal year or any fiscal year thereafter, up to and including the 2000–01 fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(d) For each school district that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in either paragraph (3) of subdivision (a) or paragraph (1) of subdivision (b), whichever is applicable, in the 2001–02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the district's revenue limit apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the district failed to offer.

SEC. 21. Section 46202 of the Education Code is amended to read:

46202. (a) Except as otherwise provided in this section, in fiscal year 2000–01 and prior, if the governing board of a school district offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal year, the Superintendent of Public Instruction shall, in that fiscal year, reduce that district's apportionment by the average percentage increase in the base revenue limit for districts of similar type and size multiplied by the district's units of average daily attendance.

(b) Except as otherwise provided in this section, in fiscal year 2001–02 and any fiscal year thereafter, if a school district that does not participate in the program set forth in this article offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal

year, the Superintendent of Public Instruction shall withhold for that fiscal year, from the district's revenue limit apportionment for the average daily attendance of each affected grade level, the amount of that apportionment multiplied by the percentage of instructional minutes fixed in the 1982–83 school year, at that grade level, that the district failed to offer.

(c) The Glendora Unified School District shall reinstate the sixth period, which shall be equivalent to at least 50 minutes of instruction, effective the start of the second semester of the 1983–84 fiscal year.

SEC. 22. Section 48916 of the Education Code is amended to read:

48916. (a) An expulsion order shall remain in effect until the governing board, in the manner prescribed in this article, orders the readmission of a pupil. At the time an expulsion of a pupil is ordered for an act other than those described in subdivision (c) of Section 48915, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. If an expulsion is ordered during summer session or the intersession period of a year-round program the governing board shall set a date, not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. For a pupil who has been expelled pursuant to subdivision (c) of Section 48915, the governing board shall set a date of one year from the date the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district, except that the governing board may set an earlier date for readmission on a case-by-case basis.

(b) The governing board shall recommend a plan of rehabilitation for the pupil at the time of the expulsion order, which may include, but not be limited to, periodic review as well as assessment at the time of review for readmission. The plan may also include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs.

(c) The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission and the process for the required review of all expelled pupils for readmission. Upon completion of the readmission process, the governing board shall readmit the pupil, unless the governing board makes a finding that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. A

description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered.

(d) If the governing board denies the readmission of an expelled pupil pursuant to subdivision (c), the governing board shall make a determination either to continue the placement of the pupil in the alternative educational program initially selected for the pupil during the period of the expulsion order or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school.

(e) The governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying the pupil readmittance into the regular school district program. The written notice shall also include the determination of the educational program for the expelled pupil pursuant to subdivision (d). The expelled pupil shall enroll in that educational program unless the parent or guardian of the pupil elects to enroll the pupil in another school district.

SEC. 23. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.

Within 10 schooldays after the conclusion of the hearing, the governing board shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the

time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the district that relate to the alleged violation.

(4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during their testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one

or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing. This section does not require a pupil or the pupil's parent or guardian to be represented by legal counsel or by a nonattorney adviser at the hearing.

(A) For purposes of this section, ''legal counsel'' means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.

(B) For purposes of this section, ''nonattorney advisor'' means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the pupil or pupil's parent or guardian to provide assistance at the hearing.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(d) Instead of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207, for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom is a member of the board or employed on the staff of the school in which

the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed

to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

In hearings which include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11455.20 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil

Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion.

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the pupil's expulsion.

(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 24. Section 51132 of the Education Code is repealed.

SEC. 25. Section 51224.5 of the Education Code is amended to read:

51224.5. (a) The adopted course of study for grades 7 to 12, inclusive, shall include algebra as part of the mathematics area of study pursuant to subdivision (f) of Section 51220.

(b) Commencing with the 2003–04 school year and each year thereafter, at least one course, or a combination of the two courses in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from high school, shall meet or exceed the rigor of the content standards for Algebra I, as adopted by the State Board of Education pursuant to Section 60605.

(c) A pupil who completes coursework in grade 7 or 8 for algebra is not exempt from the mathematics requirements for grades 9 to 12, inclusive, as specified in subdivision (b) of this section or in subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3.

SEC. 26. Section 51882 of the Education Code is repealed.

SEC. 27. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 28. Section 56343.5 of the Education Code is amended to read:

56343.5. A meeting of an individualized education program team requested by a parent to review an individualized education program pursuant to subdivision (c) of Section 56343 shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written request. If a parent makes an oral

request, the school district shall notify the parent of the need for a written request and the procedure for filing a written request.

SEC. 29. Section 56836.30 is added to the Education Code, to read:

56836.30. If special education local plan areas reorganize, including any mergers or divisions, the department shall adjust rates for payments to and from the resulting plan areas so that overall funding neither increases nor decreases from what it would have been prior to the reorganization. The effect of this section may be modified for any specific reorganization by enactment of legislation.

SEC. 30. Section 60040 of the Education Code is amended to read:

60040. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which, in their determination, accurately portray the cultural and racial diversity of our society, including:

(a) The contributions of both men and women in all types of roles, including professional, vocational, and executive roles.

(b) The role and contributions of Native Americans, African Americans, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups to the total development of California and the United States.

(c) The role and contributions of the entrepreneur and labor in the total development of California and the United States.

SEC. 31. Section 62006 of the Education Code is repealed.

SEC. 32. Section 62007 of the Education Code is repealed.

SEC. 33. Section 62008 of the Education Code is repealed.

SEC. 34. Article 3 (commencing with Section 81050) is added to Chapter 1 of Part 49 of the Education Code, to read:

Article 3. Building Standards

81050. ''School building,'' as used in this article, means any building used, or designed to be used, for community college purposes and constructed by the state, by any city, county, or city and county, by any district of any kind within the state, by any regional occupational center or program created by or authorized to act by an agreement under joint exercise of power, or by the United States government, or any agency thereof.

81051. (a) Each school building that has been placed on the National Register of Historic Places, and to be used for community college purposes, shall be renovated according to the Field Act, as defined in Section 81130.3. If subdivision (b) applies, that building may be renovated according to the regulations adopted by the State Architect pursuant to subdivision (d) of Section 17280.5.

(b) The governing board of a community college district that proposes to renovate, pursuant to this section, a school building that does not comply with the Field Act shall hold a public hearing, after giving appropriate public notice, for the purpose of gaining public input on the matter. The governing board shall adopt its decision on this proposal at a public hearing.

SEC. 35. Section 81130.3 of the Education Code is amended to read:

81130.3. This article, together with Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 3 of Part 10.5, shall be known and may be cited as the ''Field Act.''

SEC. 36. Section 19050.8 of the Government Code is amended to read:

19050.8. The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies for not to exceed two years or between jurisdictions for not to exceed four years for any of the following purposes:

(a) To provide training to employees.

(b) To enable an agency to obtain expertise needed to meet a compelling program or management need.

(c) To facilitate the return of injured employees to work.

These temporary assignments or loans shall be deemed to be in accord with this part limiting employees to duties consistent with their class and may be used to meet minimum requirements for promotional as well as open examinations. An employee participating in that arrangement shall have the absolute right to return to his or her former position. Any temporary assignment or loan of an employee made for the purpose specified in subdivision (b) shall be made only with the voluntary consent of the employee.

In addition, out-of-class experience obtained in a manner not described in this section may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and was properly verified under standards prescribed by board rule.

For purposes of this section, a temporary assignment or loan between educational agencies or jurisdictions shall be extended for up to two additional years upon a finding by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, and with the approval of the Executive Officer of the State Personnel Board, that the extension is necessary in order to substantially complete work on an educational improvement project. However, the temporary assignment of any local educator who is performing the duties of a nonrepresented classification while on loan to a state education agency

may be extended for as many successive two year intervals as necessary by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges with the concurrence of the education agency or jurisdiction. Public and private colleges and universities shall be considered educational agencies or jurisdictions within the meaning of this section.

A temporary assignment within an agency or between agencies may be extended by the board for up to two additional years in order for an employee to complete an apprenticeship program.

SEC. 37. Section 97.45 is added to the Revenue and Taxation Code, to read:

97.45. Notwithstanding subdivision (d) of Section 97.2 and subdivision (d) of Section 97.3, the amount deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681.9 of the Health and Safety Code, if that section is added by Senate Bill 1045 of the 2003–04 Regular Session, shall be allocated as follows:

(a) To county offices, the amount that would be allocated pursuant to paragraph (1) of subdivision (d) of Section 97.2 and paragraph (1) of subdivision (d) of Section 97.3 multiplied by 1.85185.

(b) To community colleges, the amount that would be allocated pursuant to paragraph (1) of subdivision (d) of Section 97.2 and paragraph (1) of subdivision (d) of Section 97.3 multiplied by 1.85185.

(c) To school districts the remainder after the allocations made in subdivisions (a) and (b).

SEC. 38. Section 45 of Chapter 1167 of the Statutes of 2002 is amended to read:

Sec. 45. The sum of three hundred thirteen million nine hundred eight thousand dollars ($313,908,000) is hereby appropriated for purposes of the School Improvement Programs by adding Item 6110-116-0001 to Section 2.00 of the Budget Act of 2002, to read:

6110-116-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.030-School Improvement Programs, pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code	313,908,000
Schedule:	

(1) 20.60.030.010-For the purpose of making allowances for kindergarten and grades 1 to 6, inclusive 259,727,000

(2) 20.60.030.020-For the purpose of making allowances for grades 7 to 12, inclusive 54,181,000

Provisions:

1. From the funds appropriated in Schedule (2), the State Department of Education shall allocate $34.67 per unit of average daily attendance (ADA) generated by pupils enrolled in grades 7 and 8 to those school districts that received School Improvement Grants in the 1989–90 fiscal year at a rate of $30 per unit of ADA generated by pupils enrolled in grades 7 and 8. The State Department of Education shall allocate $123.18 per unit of ADA generated by pupils enrolled in grades 7 and 8 to school districts that received School Improvement Grants in the 1989–90 fiscal year at a rate of $106.93 per unit of ADA generated by pupils in grades 7 and 8.
2. Of the funds appropriated in Schedule (1) of this item, $6,963,000 is for the purpose of providing a cost-of-living adjustment at a rate of 2.00 percent.
3. Of the funds appropriated in Schedule (2) of this item, $2,303,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 3.27 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil funding rates to conform to available funds. Additionally, $1,453,000 is for the purpose of providing a cost-of-living adjustment at a rate of 2.00 percent.

SEC. 39. Section 7 of Chapter 1 of the Statutes of 2003 is amended to read:

Sec. 7. (a) The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for apportionment to the West Fresno Elementary School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code to the extent those provisions are consistent with the conditions stipulated in this act. The state-appointed administrator is not required to prepare or obtain the management review and recovery plan required pursuant to paragraph (1) of subdivision (a) of Section 41327 of the Education Code. The improvement plans

completed pursuant to Section 5 are to replace that management review and recovery plan.

(b) Funds may be disbursed from the proceeds of the loan only if the state-appointed administrator and the County Office Fiscal Crisis and Management Assistance Team jointly determine that the disbursement is necessary.

(c) Based on the needs of the district to meet its obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency loan before the approval of all of the conditions established by this act.

(d) For the fiscal year in which the apportionments are disbursed and each fiscal year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, instead of the audit required by Section 41020 of the Education Code. At the discretion of the Controller, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the county superintendent and approved by the Controller. The costs of these audits shall be borne by the district. These audits are required until the Superintendent of Public Instruction, in consultation with the Controller, determines that the district is financially solvent, but may not cease being required earlier than one year following the implementation of the plan nor later than the time the apportionment, including interest, is repaid. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2 of the Education Code.

SEC. 40. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district because provisions of this act implement a federal law or regulation and results in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

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

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CHAPTER 553

An act to amend Sections 51451.5, 51505, 51615, 51628, 51642, 51643.5, 51648, 51650, 51651, 51652, 51654, 51670, and 53533 of, and to repeal Section 51646 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 51451.5 of the Health and Safety Code, as added by Section 2 of Chapter 26 of the Statutes of 2002, is amended to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing developments. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided by the Housing and Emergency Shelter Trust Fund Act of 2002 (Part 11 (commencing with Section 53500)), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(5) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years. However, if the

five-year average exceeds the Governmental-Sponsored Enterprises conforming loan limit, the sales price in that county shall not exceed 100 percent of the median sales price of residential structures in the county during the average of the previous five years.

(b) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995, Section 65995.5, or Section 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(1) The assistance is provided to a qualified first-time homebuyer pursuant to Section 50068.5.

(2) The qualified first-time homebuyer does not exceed the lower or moderate-income requirements in Section 50093.

(3) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

SEC. 2. Section 51451.5 of the Health and Safety Code, as amended by Section 18 of Chapter 935 of the Statutes of 2002, is amended to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Part 68.1 (commencing with Section 100600) of the Education Code; and Part 68.2 (commencing with Section 100800) of the Education Code), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(5) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years. However, if the five-year average exceeds the Governmental-Sponsored Enterprises conforming loan limit, the sales price in that county shall not exceed 100 percent of the median sales price of residential structures in the county during the average of the previous five years.

(b) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995, Section 65995.5, or Section 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(1) The assistance is provided to a qualified first-time home buyer pursuant to Section 50068.5.

(2) The qualified first-time home buyer does not exceed the lower or moderate-income requirements in Section 50093.

(3) A building permit for an eligible residential structure in the project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

SEC. 3. Section 51505 of the Health and Safety Code is amended to read:

51505. (a) In addition to the downpayment assistance program authorized by Section 51504, and notwithstanding any provision of Section 51504 to the contrary, the agency shall provide downpayment assistance from the funds set aside pursuant to subparagraph (D) of paragraph (7) of subdivision (a) of Section 53533 for the purposes of the portion of the Extra Credit Teacher Home Purchase Program provided for in subdivision (g) of Section 8869.84 of the Government Code and any other school personnel home ownership assistance programs as set forth by the California Debt Limit Allocation Committee, as operated by the agency. Notwithstanding the foregoing, the agency may, but is not required to, provide downpayment assistance pursuant to this section to any local issuer participating in the Extra Credit Teacher Home Purchase Program and any other school personnel home ownership assistance

programs as set forth by the California Debt Limit Allocation Committee.

(b) Downpayment assistance for purposes of this section shall be subject to, and shall meet the requirements of, the Extra Credit Teacher Home Purchase Program and any other school personnel home ownership programs as set forth by the California Debt Limit Allocation Committee, and shall include, but not be limited to, deferred payment, low interest rate loans where payment of principal and interest is deferred until the time that the home is sold or refinanced. This downpayment assistance shall meet the requirements of subdivisions (d) and (e) of Section 51504.

(c) Loans made pursuant to this section may include a provision whereby interest, principal, or both, of the loan is forgiven upon conditions to be established by the agency, or any other provision designed to carry out the purposes of the Extra Credit Teacher Home Purchase Program and any other school personnel home ownership programs as set forth by the California Debt Limit Allocation Committee.

(d) Downpayment assistance pursuant to this section shall not exceed the greater of seven thousand five hundred dollars ($7,500) or 3 percent of the home sales price. However, the agency may, with the concurrence of the California Debt Limit Allocation Committee, establish higher assistance limits where necessary to ensure sufficient assistance to allow program participation in high cost areas.

SEC. 4. Section 51615 of the Health and Safety Code is amended to read:

51615. (a) Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of; and Article 9 (commencing with Section 11120) of Chapter 1 of, Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2 of; the Government Code shall apply to the agency with respect to the administration of the insurance fund.

(b) Notwithstanding subdivision (a), the provisions described in that subdivision shall not apply to any of the following:

(1) The agency's activities and records relating to establishing rates and premiums.

(2) Bids or contracts for insurance, coinsurance, and reinsurance.

(3) Other matters necessary to maintain the competitiveness of the agency in the mortgage insurance industry, including, but not limited to, the development of financial products.

SEC. 5. Section 51628 of the Health and Safety Code is amended to read:

51628. The agency shall, after a reasonable time during which it may establish a business, be competitive with other insurers, and it is the intent of the Legislature that the insurance fund shall ultimately become neither more nor less than self-supporting. However, this section shall not be construed to preclude the insurance fund from operating in a manner that will permit the agency to create additional reserves from operations in order that the agency can maximize its insurance capacity.

SEC. 6. Section 51642 of the Health and Safety Code is amended to read:

51642. (a) The obligation of the agency and of the state to pay any insurance benefit pursuant to contracts of insurance insuring loans or bonds shall not exceed amounts deposited in the insurance fund that are made available therefor under the respective contracts of insurance. Nothing in this part shall require the Legislature to appropriate moneys from the General Fund in the State Treasury to the insurance fund on account of these obligations. The insurance of loans or bonds under this part shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(b) All contracts of insurance insuring loans or bonds pursuant to this part shall contain on the face thereof a statement to the following effect: ''Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this contract of insurance.''

(c) Moneys in the insurance fund received from the proceeds of bonds issued pursuant to the California Housing and Jobs Investment Bond Act may not be transferred to any other fund of the agency except as necessary to pay the expenses of operating the program of loan and bond insurance for single-family residential housing authorized by this part, nor shall the agency utilize any of these moneys under the direction and control of the agency, other than moneys in the insurance fund, to satisfy liabilities arising from contracts of insurance authorized by this part.

(d) Moneys in the insurance fund may not be transferred to any other fund of the agency except as necessary to pay the expenses of operating the program of loan and bond insurance authorized by this part, nor shall the agency utilize any moneys under the direction and control of the agency to satisfy liabilities arising from contracts of insurance authorized by this part.

(e) The agency, on behalf of, or for the benefit of, the California Housing Loan Insurance Fund, may borrow or receive moneys from the agency or from any federal, state, or local agency or private entity, or may pledge funds from the California Housing Finance Fund, in order to create or support reserves in the insurance fund for loan or bond

insurance as provided in this part and as authorized by resolution of the board of directors.

(f) The agency shall create a separate reserve account for insuring mortgages of multifamily housing developments which shall consist of all of the following:

(1) Funds transferred by redevelopment agencies pursuant to Section 33334.2. The use of these funds shall be consistent with Section 33334.4.

(2) Any other funds available for insuring mortgages of multifamily housing developments as may be made available for that purpose by law and as provided in this part.

(g) Reserve funds for the single-family mortgage guarantee insurance program and the multifamily residential mortgage guaranty insurance program shall not be commingled.

SEC. 7. Section 51643.5 of the Health and Safety Code is amended to read:

51643.5. (a) The agency shall be subject to, and comply with, the same reserve certification requirements as mortgage guaranty insurers who are licensed pursuant to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code.

(b) The agency shall not otherwise be subject to the Insurance Code with respect to the operation of the insurance fund, except as provided in this part.

SEC. 8. Section 51646 of the Health and Safety Code is repealed.

SEC. 9. Section 51648 of the Health and Safety Code is amended to read:

51648. While maintaining the actuarial soundness of the fund, the agency shall make efforts to do both of the following:

(a) Equitably distribute insurance based on a regionalized basis, weighted in accordance with the geographic distribution of the state's population.

(b) Focus on housing opportunities that benefit any of the following:

(1) Households with incomes at or below area median income.

(2) Households that require mortgages at or above 95 percent of the price of the home.

(3) Households that are participating in locally administered housing programs.

SEC. 10. Section 51650 of the Health and Safety Code is amended to read:

51650. (a) (1) To be qualified for loan insurance, a borrower shall be, or by reason of a loan insured pursuant to this part shall become, the owner of a multifamily rental housing development or a single-family residential structure for which an insured loan is authorized, and shall be

able to bear the usual expenses of maintaining the housing development, development, or structure and repay the loan.

(2) To be qualified for loan insurance on a single-family residential housing unit, the borrower shall also do either of the following:

(A) Qualify as a person or family of low or moderate income, as that term is defined in Section 51603.

(B) Until January 1, 2011, otherwise meet the requirements for participation in an affordable housing program or product offered by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Association (Freddie Mac).

(3) The agency may, by resolution, establish additional requirements that it deems necessary to accomplish the purposes of this part.

(b) For the purpose of increasing the efficiency and minimizing the cost of the loan insurance program, the agency may insure or issue commitments to insure loans upon the certification of an officer of an approved lending institution that the borrower is qualified for loan insurance according to eligibility requirements specified by the agency.

(c) No later than January 1, 2009, the agency shall report to the chairs of the housing committees of the Senate and the Assembly on the types of programs that were offered pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 11. Section 51651 of the Health and Safety Code is amended to read:

51651. (a) The agency shall specify the percentage of the outstanding principal indebtedness that may be insured under this part with respect to each category of loan authorized to be insured under this part.

(b) The agency may insure loans secured by mortgages or deeds of trust of first or second priority.

SEC. 12. Section 51652 of the Health and Safety Code is amended to read:

51652. Loans insured under this part shall meet all of the following requirements:

(a) The loans shall be made for a period acceptable to the agency not to exceed 40 years.

(b) The loans shall be subject to maximum loan amounts for each category of loan authorized to be insured under this part.

(c) The loans shall be secured by mortgages or deeds of trust, or the loan shall be wholly or partially insured or guaranteed by an agency or instrumentality of the United States, except for property improvement loans under limits established by the agency.

(d) The agency may establish loan-to-value limitations for each category of loan and may set forth limitations on the further encumbrance of structures and other real property securing loans, but

only to the extent necessary to prevent unreasonable impairment of the agency's security. In no case involving refinancing and rehabilitation shall the loan have a principal obligation in an amount exceeding the sum of the estimated cost of rehabilitation, if any, and the amount required to refinance existing indebtedness secured by the property and settlement and closing costs incurred in connection therewith.

(e) Loans involving the rehabilitation of residential structures shall have a principal obligation not exceeding an amount which, when added to any outstanding indebtedness constituting a lien upon the property securing the loan, creates a total outstanding indebtedness which would be reasonably secured by a mortgage of first priority on the property pursuant to subdivision (d), and as set forth by the agency.

(f) Loans involving refinancing may be insured only if refinancing is necessary to permit a borrower to afford the cost of rehabilitation, to lower his or her monthly debt-to-income payments, minimize rent increases for occupants of the residential structure, where the rents would otherwise exceed affordable rents due to the expense of rehabilitation, or to achieve another purpose specified in this division.

(g) With respect to loans involving the rehabilitation of a residential structure, the agency shall determine that the rehabilitation is economically feasible. For purposes of this subdivision, the economic feasibility of rehabilitation projects involving commercial space in a mixed residential and commercial structure shall be determined independently for any structure to be rehabilitated for mixed residential and commercial uses.

(h) For the purpose of increasing the efficiency and minimizing the cost of the loan insurance program, the agency may insure, or issue commitments to insure, loans, upon the certification of an officer of an approved lending institution that the proposed rehabilitation conforms to requirements specified by the agency regarding economic feasibility.

(i) The agency shall contract with the insured or the borrower, or both, during the term of the insurance if the agency determines that either or both of those contracts is necessary to maintain residential rentals available to lower income households at affordable rents.

(j) Relocation payments shall be made to persons and families displaced in making a site or residential structure available for rehabilitation or construction financed by loans insured under this part, and relocation advisory assistance provided to those persons, as specified by Section 51063. Relocation payments for rehabilitation or construction financed by loans insured by this part, shall also be made to owners involuntarily displaced because of inability to afford costs of compliance required pursuant to this part, but any payment pursuant to Section 4623 of Title 42 of the United States Code or Section 7263 of the Government Code shall be limited to the reasonable costs of a

replacement dwelling adequate to accommodate the displaced person or family without regard to whether the dwelling is otherwise comparable to the dwelling formerly occupied, less the amount received from sale of the dwelling. Relocation payments may be made from the proceeds of insured loans as authorized by the agency.

(k) The residential structure for which a loan is insured pursuant to this part shall be insured against loss due to fire and other causes, as provided by the agency.

(*l*) Any other terms and conditions as the agency determines are necessary to further the purposes of this part.

SEC. 13. Section 51654 of the Health and Safety Code is amended to read:

51654. The agency may provide insurance pursuant to this part for all of the following:

(a) Loans for residential structures that will be occupied primarily by persons and families of low or moderate income.

(b) Loans for privately or publicly financed rental housing developments that will benefit lower income households. ''Privately financed rental housing development,'' as used in this subdivision, includes rental housing developments financed by local public entities, as defined in Section 50079.

(c) Loans that otherwise meet the requirements for participation in an affordable housing program or product offered by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Association (Freddie Mac).

SEC. 14. Section 51670 of the Health and Safety Code is amended to read:

51670. (a) The agency may insure bonds issued by state or local agencies, or other types of issuers approved by the board of directors of the agency, to finance or refinance the construction, rehabilitation, acquisition, or preservation of single-family and multifamily residential housing for persons and families of low and moderate income. The agency may charge and collect insurance premiums for the insurance and fees for services performed in conjunction with the processing and approval of insurance applications as determined by the agency. The agency shall take all reasonable steps to ensure that bonds insured pursuant to this chapter are in a form satisfactory to the agency and contain provisions relating to the underlying security for the bonds as may be required by the agency.

(b) The agency shall take reasonable steps to ensure that both of the following occur:

(1) The bonds contain, or are subject to, terms respecting repayment, dates of maturity, and other provisions satisfactory to the agency.

(2) The bonds contain, or are subject to, provisions that the agency deems necessary with respect to security interests of the agency, including provisions relating to subrogation, liens and releases of liens, payment of taxes, escrow or trusteeship requirements, or other matters.

SEC. 15. 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 Chapter 5 (commencing with Section 50600) of Part 2.

(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 Section 50843.

(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.

(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 Chapter 4.5 (commencing with Section 50860) of Part 1.

(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.

(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). The agency may transfer these moneys as often as quarterly in amounts that shall not exceed the dollar amount of new insurance written by the agency during the preceding quarter for loans for the purchase of homes made to owner-occupant borrowers with incomes not exceeding 120 percent of the area median income, divided by the risk-to-capital ratio required for the maintenance of satisfactory credit ratings from nationally recognized credit rating services.

(C) (i) 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, are purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received homeownership counseling from the nonprofit organization. Community revitalization areas shall be limited to targeted neighborhoods identified by qualified nonprofit organizations as those neighborhoods in need of economic stimulation,

renovation, and rehabilitation through efforts that include increased homeownership opportunities for low-income families.

(ii) Effective January 1, 2004, 50 percent of the funds available pursuant to clause (i) shall be available for downpayment assistance in an amount not to exceed 6 percent of the home sales price.

(iii) After 12 months of availability, if more than 50 percent of the funds set aside pursuant to clause (ii) have been encumbered, the agency shall discontinue that program and make all remaining funds available for downpayment assistance pursuant to clause (i). If, however, less than 50 percent of the funds allocated pursuant to clause (ii) are encumbered after that 12-month period, the agency may, at its sole discretion, either make all remaining funds provided pursuant to clause (i) available for the purpose of clause (ii), or may continue to implement clause (ii) until all of the funds allocated for that purpose as of January 1, 2004, have been encumbered.

(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. 16. 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 Chapter 5 (commencing with Section 50600) of Part 2.

(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 Section 50843.

(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.

(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 supportive housing projects under the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, to serve individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness.

(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 Chapter 4.5 (commencing with Section 50860) of Part 1.

(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.

(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). The agency may transfer these moneys as often as quarterly in amounts that shall not exceed the dollar amount of new insurance written by the agency during the preceding quarter for loans for the purchase of homes made to owner-occupant borrowers with incomes not exceeding 120 percent of the area median income, divided by the risk-to-capital ratio required for the maintenance of satisfactory credit ratings from nationally recognized credit rating services.

(C) (i) 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, are purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received homeownership counseling from the nonprofit organization. Community revitalization areas shall be limited to targeted neighborhoods identified by qualified nonprofit organizations as those neighborhoods in need of economic stimulation, renovation, and rehabilitation through efforts that include increased homeownership opportunities for low-income families.

(ii) Effective January 1, 2004, 50 percent of the funds available pursuant to clause (i) shall be available for downpayment assistance in an amount not to exceed 6 percent of the home sales price.

(iii) After 12 months of availability, if more than 50 percent of the funds set aside pursuant to clause (ii) have been encumbered, the agency shall discontinue that program and make all remaining funds available for downpayment assistance pursuant to clause (i). If, however, less than 50 percent of the funds allocated pursuant to clause (ii) are encumbered after that 12-month period, the agency may, at its sole discretion, either make all remaining funds provided pursuant to clause (i) available for the purpose of clause (ii), or may continue to implement clause (ii) until

all of the funds allocated for that purpose as of January 1, 2004, have been encumbered.

(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. 17. Section 16 of this bill incorporates amendments to Section 53533 of the Health and Safety Code proposed by both this bill and AB 1475. 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 53533 of the Health and Safety Code, and (3) this bill is enacted after AB 1475, in which case Section 15 of this bill shall not become operative.

CHAPTER 554

An act to amend Section 2948.5 of the Civil Code, and to amend Section 50204 of, and to repeal Section 50707 of, the Financial Code, relating to mortgage lending.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 2948.5 of the Civil Code is amended to read:

2948.5. (a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for any period that meets any of the following requirements:

(1) Is more than one day prior to the date that the loan proceeds are disbursed from escrow.

(2) In the event of no escrow, if a request for recording is made in connection with the disbursement, is more than one day prior to the date the loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(3) In all other circumstances where there is no escrow and no request for recording, is prior to the date funds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately preceding the day of disbursement, for obligations described in paragraphs (1) and (2) of subdivision (a) if both of the following occur:

(1) The borrower affirmatively requests, and the lender agrees, that the disbursement will occur on Monday, or a day immediately following a bank holiday.

(2) The following information is disclosed to the borrower in writing: (A) the amount of additional per diem interest charged to facilitate disbursement on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

SEC. 2. Section 50204 of the Financial Code is amended to read:

50204. A licensee may not do any of the following:

(a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.

(b) Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.

(c) Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.

(d) Commit an act in violation of Section 2941 of the Civil Code.

(e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.

(f) Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(g) Engage in fraudulent home mortgage underwriting practices.

(h) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.

(i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.

(j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.

(k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

(*l*) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.

(m) Commit an act in violation of Section 1695.13 of the Civil Code.

(n) Make or service a loan that is not a residential mortgage loan under the authority of the license.

(o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.

SEC. 3. Section 50707 of the Financial Code is repealed.

CHAPTER 555

An act to amend Sections 1465.5 and 1465.6 of the Penal Code, and to amend Sections 22511.55, 22511.59, 42001, and 42001.5 of, and to add Sections 4461.3 and 42001.13 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. It is the intent of the Legislature that the Department of Motor Vehicles print the amount of a fine for a violation of Section 4461 of the Vehicle Code on the application for a distinguishing placard or license plate issued to a disabled person or veteran. The amount of the fine shall include any assessments authorized under Sections 70372 and 76000 of the Government Code, Sections 1464 and 1465.7 of the Penal Code, and Section 4461.3 of the Vehicle Code when determining the cost of a violation.

SEC. 2. Section 1465.5 of the Penal Code is amended to read:

1465.5. An assessment of two dollars ($2) for every ten dollars ($10) or fraction thereof, for every fine, forfeiture, or parking penalty imposed and collected pursuant to Section 42001.13 of the Vehicle Code for violation of Section 22507.8 of the Vehicle Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Section 9545 of the Welfare and Institutions Code.

SEC. 3. Section 1465.6 of the Penal Code is amended to read:

1465.6. In addition to any assessment levied pursuant to Section 1465.5 of this code, or any other law, an additional assessment equal to 10 percent of the fine, penalty, or forfeiture imposed under Section 42001, 42001.5, or 42001.13 of the Vehicle Code shall be imposed by each county for a violation of Section 22507.8 or 22522 of the Vehicle Code. An assessment imposed pursuant to this section shall be deposited in the general fund of the city or county wherein the violation occurred.

SEC. 4. Section 4461.3 is added to the Vehicle Code, to read:

4461.3. In addition to any fine imposed for conviction of a violation of Section 4461 or 22507.8, a city or county may adopt an ordinance or resolution to assess an additional penalty of one hundred dollars ($100).

All revenue generated from imposition of the penalty shall be used specifically for the purpose of improving enforcement of the provisions of this code relating to disabled parking spaces and placards within the city or county. Revenue generated from imposition of the penalty may not be used to supplant funds used for other general parking enforcement purposes, but may be used to offset the cost of establishing a new disabled parking enforcement program.

SEC. 5. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a) (1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the ''wheelchair symbol.'' The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2) (A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. A portion of the placard shall be printed in a contrasting color that shall be changed every two years. The size and color of this contrasting portion of the placard shall be large and distinctive enough to be readily identifiable by a law enforcement officer in a passing vehicle.

(B) As used in this section, ''year'' means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placardholders identified as deceased.

(3) Except as provided in paragraph (4), no person is eligible for more than one placard at any time.

(4) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each

vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b) (1) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the submission of a certificate, in accordance with paragraph (2), signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician or other person who signs a certificate submitted under this subdivision shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(3) The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make that information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

(e) The department shall print on any distinguishing placard issued on or after January 1, 2005, the maximum penalty that may be imposed for a violation of Section 4461. For the purposes of this subdivision, the ''maximum penalty'' is the amount derived from adding all of the following:

(1) The maximum fine that may be imposed under Section 4461.

(2) The penalty required to be imposed under Section 70372 of the Government Code.

(3) The penalty required to be levied under Section 76000 of the Government Code.

(4) The penalty required to be levied under Section 1464 of the Penal Code.

(5) The surcharge required to be levied under Section 1465.7 of the Penal Code.

(6) The penalty authorized to be imposed under Section 4461.3.

SEC. 6. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol.'' During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

(b) (1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the submission of a certificate signed by a physician or surgeon, as described in subdivision (b) of Section 22511.55, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(5) The fee for a temporary placard issued pursuant to this subdivision shall be six dollars ($6).

(c) (1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d) (1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

(e) The department shall print on any temporary distinguishing placard issued on or after January 1, 2005, the maximum penalty that may be imposed for a violation of Section 4461. For the purposes of this subdivision, the "maximum penalty" is the amount derived from adding all of the following:

(1) The maximum fine that may be imposed under Section 4461.

(2) The penalty required to be imposed under Section 70372 of the Government Code.

(3) The penalty required to be levied under Section 76000 of the Government Code.

(4) The penalty required to be levied under Section 1464 of the Penal Code.

(5) The surcharge required to be levied under Section 1465.7 of the Penal Code.

(6) The penalty authorized to be imposed under Section 4461.3.

SEC. 7. 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, 42001.13, 42001.14, 42001.15, 42001.16, or subdivision (a) of Section 42001.17, or Section 42001.18, or subdivision (b) or (c) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction which resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions which resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803, insofar as they affect failure to stop and submit to

inspection of equipment or for an unsafe condition endangering any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in the county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in the county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

(d) Notwithstanding any other provision of law, any local public entity that employs peace officers, as designated under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, the California State University, and the University of California may, by ordinance or resolution, establish a schedule of fines applicable to infractions committed by bicyclists within its jurisdiction. Any fine, including all penalty assessments and court costs, established pursuant to this subdivision shall not exceed the maximum fine, including penalty assessment and court costs, otherwise authorized by this code for that violation. If a bicycle fine schedule is adopted, it shall be used by the courts having jurisdiction over the area within which the ordinance or resolution is applicable instead of the fines, including penalty assessments and court costs, otherwise applicable under this code.

SEC. 7.5. 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, 42001.13, 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. 8. Section 42001.5 of the Vehicle Code is amended to read:

42001.5. (a) A person convicted of an infraction for a violation of subdivision (i) or (*l*) of Section 22500, or of Section 22522, shall be punished by a fine of not less than two hundred fifty dollars ($250).

(b) No part of any fine imposed under this section may be suspended, except the court may suspend that portion of the fine above one hundred dollars ($100).

(c) A fine imposed under this section may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

SEC. 9. Section 42001.13 is added to the Vehicle Code, to read:

42001.13. (a) A person convicted of an infraction for a violation of Section 22507.8 shall be punished by a fine of not less than two hundred fifty dollars ($250).

(b) The court may suspend the imposition of the fine if the person convicted possessed at the time of the offense, but failed to display, a valid special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59.

(c) A fine imposed under this section may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

SEC. 10. Section 7.5 of this bill incorporates amendments to Section 42001 of the Vehicle Code proposed by both this bill and AB 377. 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 42001 of the Vehicle Code, and (3) this bill is enacted after AB 377, in which case, Section 7 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 556

An act to amend Section 19617 of, and to add Section 19605.53 to, the Business and Professions Code, relating to horse racing.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 19605.53 is added to the Business and Professions Code, to read:

19605.53. (a) Notwithstanding subdivision (a) of Section 19605, and Section 19605.1, in lieu of a satellite wagering facility that could otherwise be authorized by the board to the Sacramento County Fair, the California Exposition and State Fair 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 in addition to any satellite wagering facility authorized at its fairgrounds under those provisions.

(b) A satellite wagering facility authorized pursuant to subdivision (a) may be operated by agreement between the California Exposition and State Fair and an entity described in Section 19604, pursuant to the provisions of that section.

SEC. 2. Section 19617 of the Business and Professions Code is amended to read:

19617. The following definitions shall govern the construction of this section:

(a) ''Breeder'' means a person who is registered as a breeder of a California-bred thoroughbred with the official registering agency and is named on the applicable Certificate of Registration issued by the Jockey Club of New York.

(b) ''Qualifying race'' means the following:

(1) In the case of breeder awards, all races in this state, all graded stakes races conducted within the United States, and other stakes races as designated by the official registering agency.

(2) As qualified by paragraph (5), in the case of owner premiums, certain claiming races, as defined by paragraph (4), and all allowance races, including maiden special weights. No owner premiums shall be paid on California-bred restricted races pursuant to Section 19568.

(3) As qualified by paragraph (5), in the case of stallion awards, all nonclaiming races and certain claiming races, if the nonclaiming races and the certain claiming races are conducted in this state during racing meetings where more than one-half of the races on every racing program are for thoroughbreds, all graded stakes races conducted within the United States, and other stakes races as designated by the official registering agency.

(4) ''Certain claiming races'' means those claiming races in the central and southern zone in which the total purse exceeds the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, or a claiming race in the northern zone in which the total purse exceeds 125 percent of the daily average purse in races, excluding stakes, distributed at that meeting during the prior year.

(5) No owner premium or stallion award shall be paid on races with purses of less than fifteen thousand dollars ($15,000). In determining whether a race complies with the definition in paragraph (4), the official registering agency shall base its determination on the actual amount of the purse at the time the race was conducted and shall not take into consideration any postrace adjustments to that purse.

(c) ''Eligible earnings'' means the following:

(1) In the case of breeder awards, the annual amount earned by a California-bred thoroughbred for finishing first, second, or third in qualifying races.

(2) In the case of owner premiums, the annual amount earned by a California-bred thoroughbred for winning qualifying races.

(3) In order for earnings from a qualifying race to be considered as eligible earnings, a California-bred thoroughbred shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(4) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible thoroughbred stallion in winning qualifying races plus the amount earned by those foals for finishing second or third in a stakes race in this state, for finishing first, second, or third in a graded stakes race within the United States, and for finishing first, second, or third in other stakes races as designated by the official registering agency.

(5) For purposes of this section, the maximum purse considered earned in any qualifying race within this state shall be three hundred thirty thousand dollars ($330,000) for a win, one hundred twenty thousand dollars ($120,000) for a second, and ninety thousand dollars ($90,000) for a third place finish and the maximum purse considered earned in any qualifying race outside of this state shall be one hundred sixty-five thousand dollars ($165,000) for a win, sixty thousand dollars ($60,000) for a second, and forty-five thousand dollars ($45,000) for a third place finish.

(6) In determining the purse earned in any qualifying race that is a stakes race, the amount earned shall be based solely on the added money, with no consideration to be given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(7) On or before February 15 of any year, it is the ultimate responsibility of the stallion owner to advise the official registering agency of any and all purses earned during the preceding year that shall be considered in determining the amount of the stallion award to which the owner is entitled.

(8) On or before February 15 of any year, it is the ultimate responsibility of the breeder to advise the official registering agency of any and all purses earned during the preceding year in graded stakes races outside of this state by horses bred by breeder.

(d) ''Eligible thoroughbred stallion'' means a thoroughbred stallion that was continuously present in this state from February 1 to June 15, inclusive, of the calendar year in which the qualifying race was

conducted, and if the sire left this state after June 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until June 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible thoroughbred stallion.

(1) Notwithstanding any provision to the contrary, a thoroughbred stallion shall be considered an eligible thoroughbred stallion only if its owner has filed a claim for stallion award on or before February 15 of the calendar year immediately following the calendar year for which the awards are being distributed and is registered with the official registering agency.

(2) The official registering agency shall establish procedures for the registration of stallions and may charge a fee for that registration.

(e) ''Official registering agency'' means the California Thoroughbred Breeders Association.

(f) ''Owner'' means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred thoroughbred earning purse money in that race.

(g) ''Quotient,'' for any fund, means the amount allocated to that fund pursuant to subdivision (b) of Section 19617.2 divided by the aggregate eligible earnings of the horses applicable to that fund. In calculating the quotient for each of the funds, any retroactive purse payments with respect to a race shall not be considered after the disbursement of the fund.

(h) ''Stallion owner'' means the person who is the owner of the eligible thoroughbred stallion as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible thoroughbred sire on the date that the stallion died.

CHAPTER 557

An act to amend Sections 1363, 1363.6, 1368, and 1373 of, to add Sections 1350.5 and 1350.7 to, to add Article 4 (commencing with Section 1357.100) to, and to add chapter and article headings to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, the Civil Code, relating to common interest developments.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1350, to read:

CHAPTER 1. GENERAL PROVISIONS

SEC. 2. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1350, to read:

Article 1. Preliminary Provisions

SEC. 3. Section 1350.5 is added to the Civil Code, to read:

1350.5. Division, part, title, chapter, and section headings do not in any manner affect the scope, meaning, or intent of this title.

SEC. 4. Section 1350.7 is added to the Civil Code, to read:

1350.7. (a) This section applies to delivery of a document to the extent the section is made applicable by another provision of this title.

(b) A document shall be delivered by one or more of the following methods:

(1) Personal delivery.

(2) First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on deposit into the United States mail.

(3) E-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.

(4) By publication in a periodical that is circulated primarily to members of the association.

(5) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(6) A method of delivery provided in a recorded provision of the governing documents.

(7) Any other method of delivery, provided that the recipient has agreed to that method of delivery.

(c) A document may be included in or delivered with a billing statement, newsletter, or other document that is delivered by one of the methods provided in subdivision (b).

(d) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does

not constitute agreement by a member of the association to that method of delivery.

SEC. 5. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1351, to read:

Article 2. Definitions

SEC. 6. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1352, to read:

CHAPTER 2. GOVERNING DOCUMENTS

SEC. 7. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1352, to read:

Article 1. Creation

SEC. 8. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1354, to read:

Article 2. Enforcement

SEC. 9. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1355, to read:

Article 3. Amendment

SEC. 10. Article 4 (commencing with Section 1357.100) is added to Title 6 of Part 4 of Division 2 of the Civil Code, immediately following Section 1357, to read:

Article 4. Operating Rules

1357.100. As used in this article:

(a) ''Operating rule'' means a regulation adopted by the board of directors of the association that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.

(b) ''Rule change'' means the adoption, amendment, or repeal of an operating rule by the board of directors of the association.

1357.110. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

(b) The rule is within the authority of the board of directors of the association conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.

(c) The rule is not inconsistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.

(d) The rule is adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this article.

(e) The rule is reasonable.

1357.120. (a) Sections 1357.130 and 1357.140 only apply to an operating rule that relates to one or more of the following subjects:

(1) Use of the common area or of an exclusive use common area.

(2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(4) Any standards for delinquent assessment payment plans.

(5) Any procedures adopted by the association for resolution of assessment disputes.

(b) Sections 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:

(1) A decision regarding maintenance of the common area.

(2) A decision on a specific matter that is not intended to apply generally.

(3) A decision setting the amount of a regular or special assessment.

(4) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(5) Issuance of a document that merely repeats existing law or the governing documents.

1357.130. (a) The board of directors shall provide written notice of a proposed rule change to the members at least 30 days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. Notice is not required under this subdivision if the board of directors determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.

(b) A decision on a proposed rule change shall be made at a meeting of the board of directors, after consideration of any comments made by association members.

(c) As soon as possible after making a rule change, but not more than 15 days after making the rule change, the board of directors shall deliver notice of the rule change to every association member. If the rule change was an emergency rule change made under subdivision (d), the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

(d) If the board of directors determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make an emergency rule change; and no notice is required, as specified in subdivision (a). An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this subdivision may not be readopted under this subdivision.

(e) A notice required by this section is subject to Section 1350.7.

1357.140. (a) Members of an association owning 5 percent or more of the separate interests may call a special meeting of the members to reverse a rule change.

(b) A special meeting of the members may be called by delivering a written request to the president or secretary of the board of directors, after which the board shall deliver notice of the meeting to the association's members and hold the meeting in conformity with Section 7511 of the Corporations Code. The written request may not be delivered more than 30 days after the members of the association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner. For the purposes of Section 8330 of the Corporations Code, collection of signatures to call a special meeting under this section is a purpose reasonably related to the interests of the members of the association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(c) The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum), or if the declaration or bylaws require a greater proportion, by the affirmative vote or written ballot of the proportion required. In lieu of calling the meeting described in this section, the board may distribute a written ballot to every member of the

association in conformity with the requirements of Section 7513 of the Corporations Code.

(d) Unless otherwise provided in the declaration or bylaws, for the purposes of this section, a member may cast one vote per separate interest owned.

(e) A meeting called under this section is governed by Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and 7613 of, the Corporations Code.

(f) A rule change reversed under this section may not be readopted for one year after the date of the meeting reversing the rule change. Nothing in this section precludes the board of directors from adopting a different rule on the same subject as the rule change that has been reversed.

(g) As soon as possible after the close of voting, but not more than 15 days after the close of voting, the board of directors shall provide notice of the results of a member vote held pursuant to this section to every association member. Delivery of notice under this subdivision is subject to Section 1350.7.

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section 1357.130.

1357.150. (a) This article applies to a rule change commenced on or after January 1, 2004.

(b) Nothing in this article affects the validity of a rule change commenced before January 1, 2004.

(c) For the purposes of this section, a rule change is commenced when the board of directors of the association takes its first official action leading to adoption of the rule change.

SEC. 11. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1358, to read:

CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

SEC. 12. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1363, to read:

CHAPTER 4. GOVERNANCE

SEC. 13. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1363, to read:

Article 1. Association

SEC. 14. Section 1363 of the Civil Code is amended to read:

1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(f) Members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.

(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the association, including any monetary penalty relating to the activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there

are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

(h) When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The board of directors of the association shall meet in executive session if requested by the member being disciplined.

If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. A disciplinary action shall not be effective against a member unless the board fulfills the requirements of this subdivision.

(i) Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be entitled to attend all meetings of the joint association other than executive sessions, (1) shall be given reasonable opportunity for participation in those meetings and (2) shall be entitled to the same access to the joint association's records as they are to the participating association's records.

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

SEC. 15. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1363.05, to read:

Article 2. Common Interest Development Open Meeting Act

SEC. 16. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1363.1, to read:

Article 3. Managing Agents

SEC. 17. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1363.5, to read:

Article 4. Public Information

SEC. 18. Section 1363.6 of the Civil Code is amended to read:

1363.6. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars ($30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(2) The name of the association.

(3) The street address of the association's onsite office, or, if none, of the responsible officer or managing agent of the association.

(4) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent of the association.

(5) The name, street address, and daytime telephone number of the association's managing agent, if any.

(6) The county, and if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

(7) If the development is in an unincorporated area, the city closest in proximity to the development.

(8) The nine-digit ZIP Code, front street, and nearest cross street of the physical location of the development.

(9) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

(10) The number of separate interests, as defined in subdivision (*l*) of Section 1351, in the development.

(b) The association shall submit the information required by this section as follows:

(1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its biennial statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).

(c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

(d) On and after January 1, 2006, the penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

(e) The Secretary of State shall make the information submitted pursuant to paragraph (4) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection 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 information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

SEC. 19. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1364, to read:

CHAPTER 5. OPERATIONS

SEC. 20. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1364, to read:

Article 1. Common Areas

SEC. 21. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1365, to read:

Article 2. Fiscal Matters

SEC. 22. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1365.7, to read:

Article 3. Insurance

SEC. 23. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1366, to read:

Article 4. Assessments

SEC. 24. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1368, to read:

CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

SEC. 25. 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 shall 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, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which 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.

SEC. 25.5. 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.

A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1368.4, to read:

CHAPTER 7. CIVIL ACTIONS AND LIENS

SEC. 27. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1370, to read:

CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

SEC. 28. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1375, to read:

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

SEC. 29. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1376, to read:

CHAPTER 10. IMPROVEMENTS

SEC. 30. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by its declaration:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

SEC. 31. Section 25.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB 1086. 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 1086, in which case Section 25 of this bill shall not become operative.

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CHAPTER 558

An act to amend Sections 290.1, 290.2, 291, 292, 293, 294, 295, and 366.21 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 290.1 of the Welfare and Institutions Code is amended to read:

290.1. If the probation officer or social worker determines that the child shall be retained in custody, he or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile court, who shall set the matter for hearing on the detention hearing calendar. The probation officer or social worker shall serve notice as prescribed in this section.

(a) Notice shall be given to the following persons whose whereabouts are known or become known prior to the initial petition hearing:

(1) The mother.

(2) The father or fathers, presumed and alleged.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(7) The attorney for the parent or parents, or legal guardian or guardians.

(8) The district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.

(9) The probate department of the superior court that appointed the guardian, if the child is a ward of a guardian appointed pursuant to the Probate Code.

(10) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice shall be given as soon as possible after the filing of the petition. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice of the initial petition hearing shall include all of the following:

(1) The date, time, and place of the hearing.

(2) The name of the child.

(3) A copy of the petition.

(e) Service of the notice shall be written or oral. If the person being served cannot read, notice shall be given orally. In the case of an Indian child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.

SEC. 2. Section 290.2 of the Welfare and Institutions Code is amended to read:

290.2. Upon the filing of a petition by a probation officer or social worker, the clerk of the juvenile court shall issue notice, to which shall be attached a copy of the petition, and he or she shall cause the same to be served as prescribed in this section.

(a) Notice shall be given to the following persons whose address is known or becomes known prior to the initial petition hearing:

(1) The mother.

(2) The father or fathers, presumed and alleged.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) If there is no parent or guardian residing in California, or if the residence is unknown, to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(7) Upon reasonable notification by counsel representing the child, parent, or guardian, the clerk of the court shall give notice to that counsel as soon as possible.

(8) The district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.

(9) The probate department of the superior court that appointed the guardian, if the child is a ward of a guardian appointed pursuant to the Probate Code.

(10) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is retained in custody, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set to be heard in less than five days in which case notice shall be given at least 24 hours prior to the hearing.

(2) If the child is not retained in custody, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing. If any person who is required to be given notice is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition by first-class mail, to that person as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice is not cause for an arrest or detention. In the instance of a failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition be personally served on all persons required to receive the notice and copy of the petition. For these purposes, personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at, or prior to, the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice of the initial petition hearing shall include all of the following:

(1) The date, time, and place of the hearing.

(2) The name of the child.

(3) A copy of the petition.

(e) In the case of an Indian child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.

SEC. 3. Section 291 of the Welfare and Institutions Code is amended to read:

291. After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The father or fathers, presumed and alleged.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) Each attorney of record unless counsel of record is present in court when the hearing is scheduled, then no further notice need be given.

(7) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is detained, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours prior to the hearing.

(2) If the child is not detained, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing.

(3) In the case of an Indian child, notice is to be given no less than 10 days before the hearing. If notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice shall include all of the following:

(1) The name and address of the person notified.

(2) The nature of the hearing.

(3) Each section and subdivision under which the proceeding has been initiated.

(4) The date, time, and place of the hearing.

(5) The name of the child upon whose behalf the petition has been brought.

(6) A statement that:

(A) If they fail to appear, the court may proceed without them.

(B) The child, parent, guardian, Indian custodian, or adult relative to whom notice is required to be given is entitled to have an attorney present at the hearing.

(C) If the parent, guardian, Indian custodian, or adult relative is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent, guardian, Indian custodian, or adult relative shall promptly notify the clerk of the juvenile court.

(D) If an attorney is appointed to represent the parent, guardian, Indian custodian, or adult relative, the represented person shall be liable for all or a portion of the costs to the extent of his or her ability to pay.

(E) The parent, guardian, Indian custodian, or adult relative may be liable for the costs of support of the child in any out-of-home placement.

(7) A copy of the petition.

(8) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of the notice of the hearing shall be given in the following manner:

(1) If the child is detained and the persons required to be noticed are not present at the initial petition hearing, they shall be noticed by personal service or by certified mail, return receipt requested.

(2) If the child is detained and the persons required to be noticed are present at the initial petition hearing, they shall be noticed by personal service or by first-class mail.

(3) If the child is not detained, the persons required to be noticed shall be noticed by personal service or by first-class mail, unless the person to be served is known to reside outside the county, in which case service shall be by first-class mail.

(4) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) Any of the notices required to be given under this section or Sections 290.1 and 290.2 may be waived by a party in person or through

his or her attorney, or by a signed written waiver filed on or before the date scheduled for the hearing.

SEC. 4. Section 292 of the Welfare and Institutions Code is amended to read:

292. The social worker or probation officer shall give notice of the review hearing held pursuant to Section 364 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) Each attorney of record, if that attorney was not present at the time that the hearing was set by the court.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene

at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) (1) Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

SEC. 5. Section 293 of the Welfare and Institutions Code is amended to read:

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) In the case of a child removed from the physical custody of his or her parent or legal guardian, the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child.

(7) Each attorney of record if that attorney was not present at the time that the hearing was set by the court.

(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. If the notice is to the child, parent or parents, or legal guardian or guardians, the notice shall also advise them of the right to be present, the right to be represented by counsel, the right to request counsel, and the right to present evidence. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) (1) Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed or by personal service on the person. Service of a copy of the notice shall be by personal service or by certified mail, return receipt requested, or any other form of notice that is equivalent to service by first-class mail.

(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) Notice to a foster parent, a relative caregiver, a certified foster parent who has been approved for adoption, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, shall indicate that the person notified may attend all hearings or may submit any information he or she deems relevant to the court in writing.

SEC. 6. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2) In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

(1) The date, time, and place of the hearing.

(2) The right to appear.

(3) The parent's right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If the parent's whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive

weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent, but the court shall order that notice be given to the grandparents of the child by first-class mail.

(C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6).

(8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child.

(g) Notice to the child and all counsel of record shall be by first-class mail.

(h) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

(i) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(j) This section shall also apply to children adjudged wards pursuant to Section 727.31.

SEC. 6.5. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to

be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2) In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(4) Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

(1) The date, time, and place of the hearing.

(2) The right to appear.

(3) The parent's right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If the parent's whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's

attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent, but the court shall order that notice be given to the grandparents of the child by first-class mail.

(C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6).

(8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child.

(g) Notice to the child and all counsel of record shall be by first-class mail.

(h) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

(i) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(j) This section shall also apply to children adjudged wards pursuant to Section 727.31.

SEC. 7. Section 295 of the Welfare and Institutions Code is amended to read:

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) The foster parents, Indian custodian, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of the parents or legal guardian.

(7) The attorney of record if that attorney of record was not present at the time that the hearing was set by the court.

(8) The alleged father or fathers, but only if the recommendation is to set a new hearing pursuant to Section 366.26.

(9) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons

listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

SEC. 8. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a

certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If,

however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the

permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a

licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 8.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to

maintain relationships between the child and individuals who are important to the child, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to

his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling

group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a

preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within

the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care with a nonrelative, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and

a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 9. Section 6.5 of this bill incorporates amendments to Section 294 of the Welfare and Institutions Code proposed by both this bill and AB 44. 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 294 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 44, in which case Section 294 of the Welfare and Institutions Code as amended by AB 44 shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

SEC. 10. Section 8.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 408. 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 366.21 of the Welfare and Institutions Code, and (3) this

bill is enacted after AB 408, in which case Section 8 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 559

An act to add Section 39800.5 to the Education Code, and to add Section 10326.1 to the Public Contract Code, relating to motor vehicles.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. (a) The Legislature finds and declares that the National Transportation Safety Board has recently issued findings that 15-passenger vans, because of their design, are involved in a greater number of single-vehicle accidents that result in rollover crashes than other passenger vehicles.

(b) It is the intent of the Legislature that all school districts, private schools, California Community Colleges, and all campuses of the California State University that own a 15-passenger van should require that those vehicles may only be driven by a person holding a commercial driver's license.

SEC. 2. Section 39800.5 is added to the Education Code, to read:

39800.5. (a) Any school district and any owner or operator of a private school that provides transportation for pupils that owns, leases, or otherwise has possession or control of a 15-passenger van, may not, on or after January 1, 2005, authorize the operation of that van for the purpose of transporting passengers unless the person driving or otherwise operating that van has both of the following:

(1) A valid class B driver's license, as provided in Division 6 (commencing with Section 12500) of the Vehicle Code, issued by the Department of Motor Vehicles.

(2) An endorsement for operating a passenger transportation vehicle, as provided in Article 6 (commencing with Section 15275) of Chapter

7 of Division 6 of the Vehicle Code, issued by the Department of Motor Vehicles.

(b) (1) Except as provided in paragraph (2), for purposes of this section, a ''15-passenger van'' means any van manufactured to accommodate 15 passengers, including the driver, regardless of whether that van has been altered to accommodate fewer than 15 passengers.

(2) For purposes of this section, a ''15-passenger van'' does not mean a 15-passenger van with dual rear wheels that has a gross weight rating equal to, or greater than, 11,500 pounds.

SEC. 3. Section 10326.1 is added to the Public Contract Code, to read:

10326.1. (a) A campus or a facility of a California Community College or a campus or a facility of the California State University, that owns, leases, or otherwise has possession or control of a 15-passenger van, may not, on or after January 1, 2005, authorize the operation of that van for the purpose of transporting passengers unless the person driving or otherwise operating that van has both of the following:

(1) A valid class B driver's license, as provided in Division 6 (commencing with Section 12500) of the Vehicle Code, issued by the Department of Motor Vehicles.

(2) An endorsement for operating a passenger transportation vehicle, as provided in Article 6 (commencing with Section 15275) of Chapter 7 of Division 6 of the Vehicle Code, issued by the Department of Motor Vehicles.

(b) (1) Except as provided in paragraph (2), for purposes of this section, a ''15-passenger van'' means any van manufactured to accommodate 15 passengers, including the driver, regardless of whether that van has been altered to accommodate fewer than 15 passengers.

(2) For purposes of this section, a ''15-passenger van'' does not mean a 15-passenger van with dual rear wheels that has a gross weight rating equal to, or greater than, 11,500 pounds.

(c) The Legislature recommends that the Regents of the University of California adopt rules and regulations similar to the provisions contained in this section.

CHAPTER 560

An act to add Section 21025.5 to the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 21025.5 is added to the Government Code, to read:

21025.5. (a) ''Public service'' with respect to a school member or a retired school member also means service rendered on or after June 30, 1977, and prior to June 30, 1982, to an independent data processing center formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of Title 1 of the Education Code, as it read on December 31, 1990, if all of the following conditions are met:

(1) The member was a school member prior to employment with the independent data processing center.

(2) The member returned to school employment following termination of his or her employment with the independent data processing center.

(3) The member received a refund of the contributions he or she made to the system during his or her employment with the independent data processing center.

(b) A retirement allowance of a retired school member who elects to receive service credit for public service pursuant to this section shall be increased only with respect to the allowance payable on and after the first day of the month following the date the election is received.

(c) A member may elect to receive credit for public service pursuant to this section at any time.

(d) Any member electing to receive credit for service under this section shall make the contributions as specified in Sections 21050 and 21052.

CHAPTER 561

An act to amend Sections 798.55 and 798.73 of the Civil Code, relating to mobilehomes.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 798.55 of the Civil Code is amended to read:

798.55. (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the

owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) (1) The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to sell or remove, at the homeowner's election, 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, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner, by United States mail within 10 days after notice to the homeowner. The copy may be sent by regular mail or by certified or registered mail with return receipt requested, at the option of the management.

(2) The homeowner shall pay past due rent and utilities upon the sale of a mobilehome pursuant to paragraph (1).

(c) If the homeowner has not paid the rent due within three days after notice to the homeowner, and if the first notice was not sent by certified or registered mail with return receipt requested, a copy of the notice shall again be sent to the legal owner, each junior lienholder, and the registered owner, if other than the homeowner, by certified or registered mail with return receipt requested within 10 days after notice to the homeowner. Copies of the notice shall be addressed to the legal owner, each junior lienholder, and the registered owner at their addresses, as set forth in the registration card specified in Section 18091.5 of the Health and Safety Code.

(d) The resident of a mobilehome that remains in the mobilehome park after service of the notice to sell or remove the mobilehome shall continue to be subject to this chapter and the rules and regulations of the park, including rules regarding maintenance of the space.

(e) No lawful act by the management to enforce this chapter or the rules and regulations of the park may be deemed or construed to waive or otherwise affect the notice to remove the mobilehome.

SEC. 2. Section 798.73 of the Civil Code is amended to read:

798.73. The management may not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the homeowner's rental agreement or in the 60 days following the initial notice required by paragraph (1) of subdivision (b) of Section 798.55. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a ''mobilehome'' within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more, and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide, and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(d) It is in a significantly rundown condition or in disrepair, as determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and to the public, exclusive of its age. The management shall use reasonable discretion in determining the general condition of the mobilehome and its accessory structures. The management shall bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair. The management of the park may not require repairs or improvements to the park space or property owned by the management, except for damage caused by the actions or negligence of the homeowner or an agent of the homeowner.

SEC. 3. This act is not intended to provide the purchaser of a mobilehome a right to a tenancy in a mobilehome park when the selling tenant has had his or her tenancy terminated pursuant to subdivision (f) or (g) of Section 798.56 of the Civil Code.

SEC. 4. This act is not intended to affect park management's existing rights and remedies to recover unpaid rent, utility charges, or reasonable incidental charges, and may not be construed to provide for an exclusive remedy.

CHAPTER 562

An act to amend Sections 56.05, 56.10, 56.11, 56.17, and 56.21 of the Civil Code, relating to personal information.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(a) ''Authorization'' means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) ''Authorized recipient'' means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) ''Contractor'' means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. ''Contractor'' does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) ''Health care service plan'' means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) ''Licensed health care professional'' means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) ''Marketing'' means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

''Marketing'' does not include any of the following:

(1) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(2) Communications made to current enrollees solely for the purpose of describing a provider's participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a Knox-Keene licensed health plan to which the enrollees already subscribe; or communications made to plan enrollees describing the availability of more cost-effective pharmaceuticals.

(3) Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual's adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:

(A) The individual receiving the communication is notified in the communication in typeface no smaller than 14-point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.

(B) The individual is provided the opportunity to opt out of receiving future remunerated communications.

(C) The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free number of the health care provider, contractor, or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt out request.

(g) ''Medical information'' means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. ''Individually identifiable'' means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

(h) ''Patient'' means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.

(i) ''Pharmaceutical company'' means any company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. ''Pharmaceutical company'' does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.

(j) ''Provider of health care'' means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. ''Provider of health care'' does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

SEC. 2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve

public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 3. Section 56.11 of the Civil Code is amended to read:

56.11. Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

SEC. 4. Section 56.17 of the Civil Code is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant's or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language and is in a typeface no smaller than 14-point type.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

(i) For purposes of this section, ''genetic characteristic'' has the same meaning as that set forth in subdivision (d) of Section 1374.7 of the Health and Safety Code.

SEC. 5. Section 56.21 of the Civil Code is amended to read:

56.21. An authorization for an employer to disclose medical information shall be valid if it:

(a) Is handwritten by the person who signs it or is a in typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information which pertains to a competent minor and which was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(3) The beneficiary or personal representative of a deceased patient.

(d) States the limitations, if any, on the types of medical information to be disclosed.

(e) States the name or functions of the employer or person authorized to disclose the medical information.

(f) States the names or functions of the persons or entities authorized to receive the medical information.

(g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the employer is no longer authorized to disclose the medical information.

(i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

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 563

An act to amend Section 450.5 of, and to repeal Section 450.4 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 450.4 of the Business and Professions Code is repealed.

SEC. 2. Section 450.5 of the Business and Professions Code is amended to read:

450.5. A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

CHAPTER 564

An act to amend Sections 26202.6, 34090.6, and 34090.7 of, to add Sections 26206.7, 26206.8, and 34090.8 to, to add Article 9 (commencing with Section 53160) to Chapter 1 of Part 1 of Division 2 of Title 5 of, and to repeal Section 26202.3 of, the Government Code, and to add Section 99164 to the Public Utilities Code, relating to local government records.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. It is the intent of this act to revise and conform various statutes pertaining to the authority of cities, counties, and special districts to destroy recordings of routine video monitoring and of telephone and radio communications after certain periods of time, by removing references in certain statutes to units of government not subject to particular chapters of the Government Code in which those statutes are located, and by making appropriate additions to other chapters of the Government Code, in order to thereby avoid ambiguity. It is further the intent of this act to provide that videotapes or recordings made by security cameras operated as a part of a public transit system shall be retained for one year unless specified conditions apply because current technology is not readily amenable to storage.

SEC. 2. Section 26202.3 of the Government Code is repealed.

SEC. 3. Section 26202.6 of the Government Code is amended to read:

26202.6. (a) Notwithstanding the provisions of Sections 26202, 26205, and 26205.1, the head of a department of a county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, ''recordings of telephone and radio communications'' means the routine daily taping and recording of telephone communications to and from a county and all radio communications relating to the operations of the departments.

(c) For purposes of this section, ''routine video monitoring'' means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in

subdivision (a), including mobile in-car video systems, jail observation and monitoring systems, and building security taping systems.

(d) For purposes of this section, ''department'' includes a public safety communications center operated by the county and the governing board of any special district whose membership is the same as the membership of the board of supervisors.

SEC. 4. Section 26206.7 is added to the Government Code, to read:

26206.7. Notwithstanding the provisions of Section 26202, the legislative body of a county may prescribe a procedure whereby duplicates of county records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of ''routine video monitoring'' pursuant to Section 26202.6, shall be considered duplicate records if the county keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

SEC. 5. Section 26206.8 is added to the Government Code, to read:

26206.8. (a) When installing new security systems, a transit agency operated by a county shall only purchase and install equipment capable of storing recorded images for at least one year, unless all of the following conditions apply:

(1) The transit agency has made a diligent effort to identify a security system that is capable of storing recorded data for one year.

(2) The transit agency determines that the technology to store recorded data in an economically and technologically feasible manner for one year is not available.

(3) The transit agency purchases and installs the best available technology with respect to storage capacity that is both economically and technologically feasible at that time.

(b) Notwithstanding any other provision of law, videotapes or recordings made by security systems operated as part of a public transit system shall be retained for one year, unless one of the following conditions applies:

(1) The videotapes or recordings are evidence in any claim filed or any pending litigation, in which case the videotapes or recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The videotapes or recordings recorded an event that was or is the subject of an incident report, in which case the videotapes or recordings shall be preserved until the incident is resolved.

(3) The transit agency utilizes a security system that was purchased or installed prior to January 1, 2004, or that meets the requirements of

subdivision (a), in which case the videotapes or recordings shall be preserved for as long as the installed technology allows.

SEC. 6. Section 34090.6 of the Government Code is amended to read:

34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, ''recordings of telephone and radio communications'' means the routine daily taping and recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.

(c) For purposes of this section, ''routine video monitoring'' means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation and monitoring systems, and building security taping systems.

(d) For purposes of this section, ''department'' includes a public safety communications center operated by the city or city and county.

SEC. 7. Section 34090.7 of the Government Code is amended to read:

34090.7. Notwithstanding the provisions of Section 34090, the legislative body of a city may prescribe a procedure whereby duplicates of city records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of ''routine video monitoring'' pursuant to Section 34090.6, shall be considered duplicate records if the city keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

SEC. 8. Section 34090.8 is added to the Government Code, to read:

34090.8. (a) When installing new security systems, a transit agency operated by a city or city and county shall only purchase and install equipment capable of storing recorded images for at least one year, unless all of the following conditions apply:

(1) The transit agency has made a diligent effort to identify a security system that is capable of storing recorded data for one year.

(2) The transit agency determines that the technology to store recorded data in an economically and technologically feasible manner for one year is not available.

(3) The transit agency purchases and installs the best available technology with respect to storage capacity that is both economically and technologically feasible at that time.

(b) Notwithstanding any other provision of law, videotapes or recordings made by security systems operated as part of a public transit system shall be retained for one year, unless one of the following conditions applies:

(1) The videotapes or recordings are evidence in any claim filed or any pending litigation, in which case the videotapes or recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The videotapes or recordings recorded an event that was or is the subject of an incident report, in which case the videotapes or recordings shall be preserved until the incident is resolved.

(3) The transit agency utilizes a security system that was purchased or installed prior to January 1, 2004, or that meets the requirements of subdivision (a), in which case the videotapes or recordings shall be preserved for as long as the installed technology allows.

SEC. 9. Article 9 (commencing with Section 53160) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 9. Preservation of Videotapes and Recordings

53160. (a) The head of a special district, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the special district. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this article, ''recordings of telephone and radio communications'' means the routine daily taping and recording of telephone communications to and from a special district, and all radio communications relating to the operations of the special district.

(c) For purposes of this article, ''routine video monitoring'' means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the special district, including

mobile in-car video systems, jail observation and monitoring systems, and building security taping systems.

(d) For purposes of this article, ''special district'' shall have the same meaning as ''public agency,'' as that term is defined in Section 53050.

53161. Notwithstanding Section 53160, the legislative body of a special district may prescribe a procedure whereby duplicates of special district records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of ''routine video monitoring'' pursuant to Section 53160, shall be considered duplicate records if the special district keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for at least 90 days after occurrence of the event recorded thereon.

53162. (a) When installing new security systems, a transit agency operated by a special district shall only purchase and install equipment capable of storing recorded images for at least one year, unless all of the following conditions apply:

(1) The transit agency has made a diligent effort to identify a security system that is capable of storing recorded data for one year.

(2) The transit agency determines that the technology to store recorded data in an economically and technologically feasible manner for one year is not available.

(3) The transit agency purchases and installs the best available technology with respect to storage capacity that is both economically and technologically feasible at that time.

(b) Notwithstanding any other provision of law, videotapes or recordings made by security systems operated as part of a public transit system shall be retained for one year, unless one of the following conditions applies:

(1) The videotapes or recordings are evidence in any claim filed or any pending litigation, in which case the videotapes or recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The videotapes or recordings recorded an event that was or is the subject of an incident report, in which case the videotapes or recordings shall be preserved until the incident is resolved.

(3) The transit agency utilizes a security system that was purchased or installed prior to January 1, 2004, or that meets the requirements of subdivision (a), in which case the videotapes or recordings shall be preserved for as long as the installed technology allows.

SEC. 10. Section 99164 is added to the Public Utilities Code, to read:

99164. (a) When installing new security systems, a transit agency operated by an operator as defined in Section 99210 shall only purchase and install equipment capable of storing recorded images for at least one year, unless all of the following conditions apply:

(1) The transit agency has made a diligent effort to identify a security system that is capable of storing recorded data for one year.

(2) The transit agency determines that the technology to store recorded data in an economically and technologically feasible manner for one year is not available.

(3) The transit agency purchases and installs the best available technology with respect to storage capacity that is both economically and technologically feasible at that time.

(b) Notwithstanding any other provision of law, videotapes or recordings made by security systems operated as part of a public transit system shall be retained for one year, unless one of the following conditions applies:

(1) The videotapes or recordings are evidence in any claim filed or any pending litigation, in which case the videotapes or recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The videotapes or recordings recorded an event that was or is the subject of an incident report, in which case the videotapes or recordings shall be preserved until the incident is resolved.

(3) The transit agency utilizes a security system that was purchased or installed prior to January 1, 2004, or that meets the requirements of subdivision (a), in which case the videotapes or recordings shall be preserved for as long as the installed technology allows.

CHAPTER 565

An act to add and repeal Section 2898 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 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 telecommunications industry is evolving towards offering to consumers various package options, which include local, regional, and long-distance service.

(b) Consumers have a right to make intelligent and informed decisions relative to what telecommunications services they wish to purchase.

(c) Consumers are able to make intelligent and informed decisions relative to what telecommunications services they wish to purchase, only when they are able to determine how much they are being charged for local and long distance calling.

SEC. 2. Section 2898 is added to the Public Utilities Code, to read:

2898. (a) Every incumbent local exchange carrier and competitive local exchange carrier shall provide, upon request and without charge, to customers electing to purchase any service package that includes both local and long-distance service, or for customers that buy a set number of minutes for a fixed price, a breakdown showing the total minutes of use in the billing period listed under one telephone number for toll and long-distance service.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. 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 566

An act to amend Sections 44500 and 44664 of the Education Code, relating to teachers.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 44500 of the Education Code is amended to read:

44500. (a) There is hereby established the California Peer Assistance and Review Program for Teachers. The governing board of a school district and the exclusive representative of the certificated employees in the school district may develop and implement a program

authorized by this article that meets local conditions and conforms with the principles set forth in subdivision (b).

(b) The following principles, at a minimum, shall be included in a locally developed program authorized by this article:

(1) A teacher participant shall be a permanent employee in a school district with 250 or greater units of average daily attendance or a permanent or probationary employee in a school district with fewer than 250 units of average daily attendance and volunteer to participate in the program or be referred for participation in the program as a result of an evaluation performed pursuant to subdivision (c) of Section 44664. In addition, teachers receiving assistance may be referred pursuant to a collectively bargained agreement.

(2) Performance goals for an individual teacher shall be in writing, clearly stated, aligned with pupil learning, and consistent with Section 44662.

(3) Assistance and review shall include multiple observations of a teacher during periods of classroom instruction.

(4) The program shall expect and strongly encourage a cooperative relationship between the consulting teacher and the principal with respect to the process of peer assistance and review.

(5) The school district shall provide sufficient staff development activities to assist a teacher to improve his or her teaching skills and knowledge.

(6) The program shall have a monitoring component with a written record.

(7) The final evaluation of a teacher's participation in the program shall be made available for placement in the personnel file of the teacher receiving assistance.

SEC. 2. Section 44664 of the Education Code is amended to read:

44664. (a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

(1) At least once each school year for probationary personnel.

(2) At least every other year for personnel with permanent status.

(3) At least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, as defined in 20 U.S.C. Sec. 7801, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree. The certificated employee or the evaluator may withdraw consent at any time.

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the

employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(c) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), any certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

CHAPTER 567

An act to add Section 44013 to the Education Code, relating to teacher credentialing.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 44013 is added to the Education Code, to read:

44013. (a) ''Educator'' means a certificated person holding a valid California teaching credential or a valid California services credential issued by the commission who is employed by a local education agency or by a special education local planning area and who is not employed as an independent contractor or consultant.

(b) The definition of educator as set forth in subdivision (a) does not apply to a person participating in a program enacted by statute prior to January 1, 2004.

(c) The definition of educator as set forth in subdivision (a) applies to a person participating in a program enacted by statute on or after January 1, 2004, only if the statute implementing the program expressly references this section.

CHAPTER 568

An act to amend and renumber Section 305.5 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 305.5 of the Welfare and Institutions Code is amended and renumbered to read:

305.6. (a) Any peace officer may, without a warrant, take into temporary custody a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety.

(b) (1) Notwithstanding subdivision (a) and Section 305, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a petition for adoption and a Health Facility Minor Release Report, prescribed by the department, has been completed by the hospital, including the marking of the boxes applicable to an independent adoption or agency adoption planning, and signed by the placing birth parent or birth parents and the prospective adoptive parent or parents, prior to the discharge of the birth parent or the minor from the hospital. Prior to signing of the Health Facility Minor Release Report, the birth parent or birth parents shall be given a notice written in at least 14-point pica type, containing substantially the following statements:

(i) That the Health Facility Minor Release Report does not constitute consent to adoption of the minor by the prospective adoptive parent or parents, or any other prospective adoptive parent or parents.

(ii) That the Health Facility Minor Release Report does not constitute a relinquishment of parental rights for the purposes of adoption.

(iii) That the birth parent or birth parents or any person authorized by the birth parent or birth parents may reclaim the minor at any time from the prospective adoptive parent or parents or any other person to whom the minor was released by the hospital, until an adoption placement agreement or a relinquishment is signed by the birth parent or birth parents.

This notice shall be signed by the birth parent or birth parents and attached to the Health Facility Minor Release Report.

(C) The release of the minor to a prospective adoptive parent or parents does not pose an immediate danger to the minor.

(D) An attorney or an adoption agency has provided documentation stating that he or she, or the agency, is representing the prospective adoptive parent or parents for purposes of the adoption. In the case of an independent adoption, as defined in Section 8524 of the Family Code, the attorney or adoption agency shall provide documentation stating that the prospective adoptive parent or parents have been informed that the child may be eligible for benefits provided pursuant to the Adoption Assistance Program, as set forth in Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9, only if, at the time the petition is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter XVI (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.

(E) The prospective adoptive parent or parents or their representative provides a copy of the Health Facility Minor Release Report with the signed notice to the birth parent or birth parents as described in subparagraph (B) and a copy of the petition for adoption to the local child protective services agency or to the peace officer who is at the hospital to take the minor into temporary custody.

(2) Notwithstanding Section 305 or subdivision (a) of this section, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a petition for adoption and a prospective adoptive parent or prospective adoptive parents have been licensed to act as a foster parent or foster parents of the minor pending finalization of the petition for adoption.

(C) The release of the minor to the prospective adoptive parent or prospective adoptive parents does not pose an immediate danger to the minor.

(D) The prospective adoptive parent or parents or their representative provides a copy of the petition for adoption and documents evidencing licensure as a foster parent or foster parents to the local child protective services agency or to the peace officer who is at the hospital to take the minor into temporary custody.

(3) If at the time the minor is released to the custody of a prospective adoptive parent or parents or their representative pursuant to paragraph (1) or (2), the petition for adoption of the minor has not been filed with the court, the petition for adoption shall be filed within 15 calendar days of the date the birth parent was released from the hospital.

(4) A copy of an adoption placement agreement signed by the placing birth parent or birth parents and the prospective adoptive parent or parents may be used in place of the Health Facility Minor Release Report and notice to the birth parent or birth parents as described in subparagraph (B) of paragraph (1).

(c) Nothing in this section is intended to create a duty that requires law enforcement to investigate the prospective adoptive parent or parents.

CHAPTER 569

An act to add Section 38 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 38 is added to the Revenue and Taxation Code, to read:

38. (a) The Legislative Analyst shall submit a report to the Legislature regarding the possible consolidation of the remittance processing and cashiering functions and the mail processing operations, of the Franchise Tax Board, the State Board of Equalization, and the Employment Development Department.

(b) The Franchise Tax Board, the State Board of Equalization, and the Employment Development Department shall provide the Legislative Analyst all data and information that the Legislative Analyst identifies as necessary for completing the report and shall assist the Legislative Analyst in the preparation of the report. The information provided to the Legislative Analyst shall include, but not be limited to, an evaluation of the short- and long-term fiscal and budgetary advantages and

disadvantages that would result from the proposed consolidation of the remittance processing and cashiering functions and the mail processing functions of, the Franchise Tax Board, the State Board of Equalization, and the Employment Development Department. Any data and information requested by the Legislative Analyst shall be submitted on or before July 1, 2004.

(c) The purpose of the report required by this section is to determine, to the extent possible and based on available information and reasonable assumptions, if there are any benefits to the consolidation of the management and control of these operations based on all of the following criteria:

(1) The elimination of duplicative functions and fragmented responsibilities.

(2) Increased operational efficiencies due to the use of improved technologies and economies of scale.

(3) Additional interest earnings for the state.

(d) For purposes of this section, ''remittance processing and cashiering'' means receiving, batching, balancing, and depositing remittances.

(e) The Legislative Analyst shall provide to the Legislature its report and any recommendations and considerations with regard to the possible consolidation of these functions by November 1, 2004.

CHAPTER 570

An act to add Section 17072.14 to the Education Code, relating to public schools.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 17072.14 is added to the Education Code, to read:

17072.14. Notwithstanding Section 17070.63, the board may allow adjustments to a new construction grant if, as a result of additional requirements imposed by the Department of Toxic Substances Control, the actual amount paid by a school district for allowable costs of hazardous materials evaluation and removal, including associated fees, exceeds the amount of the grant apportionment for those purposes. The combined amount of the initial apportionment for these purposes and the

adjustment pursuant to this section may not exceed the amount permitted pursuant to Section 17072.13.

CHAPTER 571

An act to amend Section 678 of, and to add Chapter 11.5 (commencing with Section 679.9) to Part 1 of Division 1 of, the Insurance Code, relating to property insurance.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 678 of the Insurance Code is amended to read:

678. (a) At least 45 days prior to policy expiration, an insurer shall deliver to the named insured or mail to the named insured at the address shown in the policy, either of the following:

(1) An offer of renewal of the policy contingent upon payment of premium as stated in the offer, stating each of the following:

(A) Any reduction of limits or elimination of coverage.

(B) The telephone number of the insurer's representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the renewal offer.

(2) A notice of nonrenewal of the policy. That notice shall contain each of the following:

(A) The reason or reasons for the nonrenewal.

(B) The telephone number of the insurer's representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the notice of nonrenewal.

(C) A brief statement indicating that if the consumer has contacted the insurer to discuss the nonrenewal and remains unsatisfied, he or she may have the matter reviewed by the department. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints.

(b) In the event an insurer fails to give the named insured either an offer of renewal or notice of nonrenewal as required by this section, the existing policy, with no change in its terms and conditions, shall remain in effect for 45 days from the date that either the offer to renew or the notice of nonrenewal is delivered or mailed to the named insured. A

notice to this effect shall be provided by the insurer to the named insured with the policy or the notice of renewal or nonrenewal.

(c) Any policy written for a term of less than one year shall be considered as if written for a term of one year. Any policy written for a term longer than one year, or any policy with no fixed expiration date, shall be considered as if written for successive policy periods or terms of one year.

(d) This section applies only to policies of insurance specified in Section 675.

SEC. 2. Chapter 11.5 (commencing with Section 679.9) is added to Part 1 of Division 1 of the Insurance Code, to read:

CHAPTER 11.5. DISCLOSURE REQUIREMENTS FOR CERTAIN PROPERTY INSURANCE

679.9. If an insurer changes the annual premium under a policy specified in Section 675, it shall, within 15 business days of a request by the insured, inform the insured in writing of each of the following:

(a) The amount of the premium increase or decrease in comparison to the premium charged in the previous year.

(b) The reason or reasons for the change, including, but not limited to, the deletion of a loss-free credit, the application of a claim-related surcharge, or any other reason related to a claim or policyholder inquiry.

(c) A brief statement indicating each of the following:

(1) That the consumer may contact their agent or the insurer with any additional questions regarding the premium and providing the telephone number for the insurer's representatives who are capable of responding, and authorized to respond, to consumer inquiries and complaints.

(2) That if the insured has contacted the insurer to discuss a premium increase and the insured remains unsatisfied, he or she may contact the department with any inquiries or complaints. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints.

SEC. 3. The provisions of this bill shall not become operative until March 1, 2004.

CHAPTER 572

An act to amend Sections 17073.15, 17073.20, and 17074.10 of the Education Code, relating to school facilities.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 17073.15 of the Education Code is amended to read:

17073.15. A school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. A school district is eligible to receive an additional apportionment for the modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the date of the previous apportionment.

SEC. 2. Section 17073.20 of the Education Code is amended to read:

17073.20. Funding may be approved for the modernization of any permanent school building that is more than 25 years old, or, any portable classroom that is more than 20 years old, as described in Section 17071.30.

SEC. 3. Section 17074.10 of the Education Code is amended to read:

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that satisfy the requirements of Section 17073.15:

(1) Two thousand two hundred forty-six dollars ($2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars ($2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars ($3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars ($2,500) for any

modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(f) For a portable classroom that is eligible for a second modernization, the board shall require the school district to use the modernization funds to replace the portable classroom and to certify that the existing eligible portable classroom will be removed from any classroom use unless a district is able to document that modernizing the portable classroom is a better use of public resources. The capacity and eligibility of the school district may not be adjusted for replacing a portable classroom pursuant to this subdivision and Section 17073.15.

CHAPTER 573

An act to amend Sections 8957, 44393, 52055.51, 52055.610, 52055.650, 53081, 53083, 60423, 69440, and 84750 of, to amend and renumber Section 52055.52 of, to add Sections 18866, 41474, 52055.54, 54761.4, and 69999.3 to, to add Chapter 4.6 (commencing with Section 18880) to Part 11 of, to add and repeal Section 60422.1 of, to repeal Section 426 of, to repeal Article 4.2 (commencing with Section 18733) and Article 4.5 (commencing with Section 18735) of Chapter 4 of Part 11 of, and Article 5 (commencing with Section 60650) of Chapter 5 of Part 33 of, to repeal Chapter 7 (commencing with Section 99300) of Part 65 of, and to repeal and add Section 53084 of, the Education Code, and to amend Section 12.40 of Chapter 157 of, and amend Section 37 of Chapter 227 of, the Statutes of 2003, relating to schools, and making an appropriation therefor.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 426 of the Education Code is repealed.

SEC. 2. Section 8957 of the Education Code is amended to read:

8957. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for the Arts (CSSSA) for each fiscal year be financed by state funds. The balance of the operating costs shall be financed with fees and private support.

(b) The board of trustees shall set a tuition fee within a range that corresponds to actual costs to the summer school of services per pupil, up to but not exceeding one thousand dollars ($1,000) per session in

1989. These costs shall be limited to tuition, pupil recruitment expenses, faculty and instructional supplies and related equipment, pupil room and board, and security. The amount of this fee may be increased by the board of trustees up to a 5-percent increase each year thereafter. To the extent that fees are not increased as authorized in any year, the board of trustees may increase fees in any subsequent year up to the maximum amount that would have existed if the fees had been increased 5 percent in each year.

(c) The board of trustees may award full or partial scholarships on the basis of need and ability. Pupils who are unable to pay all or part of the fee may petition the board of trustees for a fee reduction or waiver. The department, in conjunction with the board of trustees, shall promulgate rules and regulations regarding fee reduction and waivers, which shall ensure all of the following:

(1) That, to the degree scholarship funds are available, no talented applicant shall be denied admission solely because of inability to pay all or part of the fee.

(2) That any public announcement regarding the summer school program include notification that full scholarships are available, and information regarding the procedure for applying for a scholarship award.

(3) That, pursuant to Section 8953, pupil participation in the summer school program is broadly representative of the socioeconomic and ethnic diversity of the state.

(4) That the percentage of low income pupils attending the CSSSA is not reduced below the average percentage of low income pupils attending the CSSSA in the prior two years, as a result of any fee increase approved pursuant to subdivision (b).

(d) Subdivision (b) applies only to pupils who are California residents. For pupils who are not California residents, the board of trustees annually shall set a tuition fee that is not less than the total actual costs to the summer school of services per pupil. The total actual costs of services per pupil shall be computed each year for this purpose by dividing the amount of school expenditures for the prior fiscal year by the total pupil population for the prior year.

(e) The Foundation for the California State Summer School for the Arts, which has been established as a nonprofit foundation to support the CSSSA, may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

(f) The board of trustees shall report annually by October 1, to the Governor, the Legislature, and the Department of Finance, the percentages and numbers of pupils that receive each of the following:

(1) Scholarships.

(2) A waiver of all fees.

(3) A reduction of fees.

(4) Data comparable to that required by paragraphs (1), (2), and (3) for the prior three years.

SEC. 3. Article 4.2 (commencing with Section 18733) of Chapter 4 of Part 11 of the Education Code is repealed.

SEC. 4. Article 4.5 (commencing with Section 18735) of Chapter 4 of Part 11 of the Education Code is repealed.

SEC. 5. Chapter 4.6 (commencing with Section 18880) is added to Part 11 of the Education Code, to read:

CHAPTER 4.6. CALIFORNIA LIBRARY LITERACY AND ENGLISH ACQUISITION SERVICES PROGRAM

18880. (a) The California Library Literacy and English Acquisition Services Program is hereby established within the California State Library as a public library program designed to reduce illiteracy among children and adults by providing English language literacy instruction and related services to native and nonnative English speaking youth and adults residing in California. For purposes of this article, ''English language literacy instruction'' means the development of basic skills of speaking, reading, and writing in the English language.

(b) The California State Library shall allocate funds appropriated in the Budget Act for the California Library Literacy and English Acquisition Services Program to local library jurisdictions that are effectively providing literacy services.

(c) At local discretion, jurisdictions may use their allocation from the State Literacy Program for any of the services described in Section 18881.

(d) The California State Library shall provide local jurisdictions with technical assistance to the extent that resources are available for this purpose.

18881. The California Library Literacy and English Acquisition Services Program for public libraries may be used for any of the following:

(a) (1) Services designed to reduce adult illiteracy by providing English language literacy instruction and related services to adults and youth who are not enrolled in school. A participating public library may establish an adult literacy instructional program that provides adult basic literacy instruction and related services. Participant learning shall be

evaluated on the basis of statewide guidelines established by the State Librarian.

(2) The public library shall do all of the following in establishing and implementing the program:

(A) Seek community and local government awareness of and support for the program and develop a local commitment of resources for the program's continuation.

(B) Develop cooperative relationships with other local literacy service providers and participate in existing community adult literacy coalitions, in order to address the wide variety of literacy needs of the community and ensure an effective utilization of resources. The public library shall assist in the establishment of a community adult literacy coalition if none currently exists.

(C) Recruit and train volunteers to provide tutoring and other services in public library and other community settings.

(D) Certify that the local jurisdiction will provide the same level of local and private fiscal support as it did in the preceding fiscal year.

(b) (1) Services to prevent illiteracy through coordinated literacy and preliteracy services to families that include illiterate adults and young children. The program shall provide reading preparation services for young children in public library settings and shall instruct parents in reading to their children. In addition, the program shall provide technical assistance, parent support, and any resources and materials necessary for its implementation.

(2) A public library implementing this service shall meet all of the following requirements:

(A) Offer new services to families with young children with the goal of helping the children become successful readers by increasing their general competence, self-confidence, and positive emotional associations with reading as a family experience and familiarity with the lifelong use of library resources. Recruitment of parents not previously included in public library literacy programs is a high priority.

(B) Families eligible for the program shall include, but not be limited to, those with young children up to the age of five years.

(C) Program meetings shall be held in public library settings.

(D) The public library literacy program staff and children's services staff shall work in close coordination with the State Library in administering the program to assure maximum integration of literacy services to parents and preliteracy services to their children.

(3) Services offered by a public library under this subdivision shall include the following:

(A) Acquisition of books, of appropriate reading levels for, and containing subjects of interest to, children for ownership by young children of families participating in the program.

(B) Regular meetings of parents and children in public library settings during hours that are suitable for parents and their children.

(C) Storytelling, word games, and other exercises designed to promote enjoyment of reading in adults and children.

(D) Use of children's books and language experience stories from the meetings as material for adult literacy instruction.

(E) Instruction for parents in book selection and reading aloud to children.

(F) Services to enhance full family participation and to foster a family environment conducive to reading.

(G) Assistance to parents in using services in order to access books and other materials on such topics as parenting, child care, health, nutrition, and family life education.

(H) Other services, as necessary to enable families to participate in the program.

(c) Services for pupils in kindergarten and grades 1 to 12, inclusive, and their families in local English language learner and literacy programs. Local libraries may offer year-round literacy and English language tutoring in collaboration with nonprofit and other local organizations.

18883. A local library shall ensure that funds received pursuant to this chapter are exclusively used for expenses resulting from providing English language and literacy services and shall ensure that at least 90 percent of the funds received for the program are expended on direct services and related materials.

18884. The State Librarian shall provide a report by March 1, 2004, to the Legislature that includes, but is not limited to, all of the following information:

(a) The amount of funding allocated pursuant to this chapter.

(b) The number of libraries or schools participating in the program.

(c) The types of services to be provided with funds received pursuant to this chapter.

(d) The number of English language learners participating in the program.

(e) The number of parents or adults participating in the program.

SEC. 6. Section 18866 is added to the Education Code, to read:

18866. Funding for the purposes of this chapter is contingent upon an appropriation being made for that purpose in the annual Budget Act.

SEC. 7. Section 41474 is added to the Education Code, to read:

41474. Notwithstanding Sections 41471 and 41472, the school district may submit a request to the Director of Finance to have the interest rate on the remaining outstanding balance of its emergency apportionments changed to reflect the investment rate of the Pooled Money Investment Account as reported by the State Controller's office

for the immediately preceding fiscal year. The Director of Finance may change the interest rate as requested by the school district pursuant to this section. A change in the interest rate does not change other terms of the repayment schedule.

SEC. 8. Section 44393 of the Education Code is amended to read:

44393. (a) The California School Paraprofessional Teacher Training Program is hereby established for the purpose of recruiting paraprofessionals to participate in a program designed to encourage them to enroll in teacher training programs and to provide instructional service as teachers in the public schools.

(b) The Commission on Teacher Credentialing, in consultation with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, the chancellors of private institutions of higher education that offer accredited teacher training programs, and representatives of certificated and classified employee organizations, shall select 24 or more school districts or county offices of education representing rural, urban, and suburban areas that apply to participate in the program. The commission shall ensure that, at a minimum, a total of 600 school paraprofessionals are recruited from among the 24 or more participating school districts or county offices of education. The criteria adopted by the commission for the selection of school districts or county offices of education to participate in the program shall include all of the following:

(1) The extent to which the applicant school district or county office of education demonstrates the capacity and willingness to accommodate the participation of school paraprofessionals of the school in teacher training programs conducted at institutions of higher education.

(2) The extent to which the applicant's plan for the implementation of its recruitment program involves the active participation of one or more local campuses of the participating institutions of higher education in the development of coursework and teaching programs for participating school paraprofessionals. Each selected school district or county office of education shall be required to enter into a written articulation agreement with the participating campuses of the institutions of higher education.

(3) The extent to which the applicant's plan for recruitment attempts to meet the demand for bilingual-crosscultural teachers.

(4) The extent to which the applicant's plan for recruitment attempts to meet the demand for multiple subject credentialed teachers interested in teaching kindergarten or any of grades 1 to 3, inclusive. For purposes of this paragraph, each paraprofessional selected to participate shall have completed at least two years of undergraduate college or university coursework and shall have demonstrated an interest in obtaining a

multiple subject teaching credential for teaching kindergarten or any of grades 1 to 3, inclusive.

(5) The extent to which the applicant's plan for recruitment attempts to meet the demand for special education teachers.

(6) The extent to which the applicant's plan for recruitment includes a developmentally sequenced series of job descriptions that lead from an entry-level school paraprofessional position to an entry-level teaching position in that school district or county office of education.

(7) The extent to which the applicant's plan for recruitment attempts to meet its own specific teacher needs.

(8) The extent to which the applicant's plan for implementation of its recruitment program involves participation in a district internship program pursuant to Sections 44325, 44326, 44327, 44328, and 44830.3 or a university internship program pursuant to Article 3 (commencing with Section 44450) of Chapter 3.

(c) Each selected school district or county office of education shall provide information and assistance to each school paraprofessional it recruits under the program regarding admission to a teacher training program.

(d) (1) The school district or county office of education shall recruit and organize groups, or ''cohorts,'' of school paraprofessionals, of no more than 30, and no less than 10, in each cohort. Cohorts shall be organized to consist of school paraprofessionals having approximately equal academic experience and qualifications, as determined by the school district or county office of education. To the extent possible, the members of each cohort shall proceed through the same subject matter and credential programs. The members of each cohort shall enroll in the same campus and shall be provided by the school district or county office of education with appropriate support and information throughout the course of their studies.

(2) Each school district or county office of education shall certify that it has received a commitment from each member of a cohort that he or she will accomplish all of the following:

(A) Graduate from an institution of higher education under the program with a bachelor's degree.

(B) Complete all of the requirements for and obtain a multiple subject, single subject, or education specialist teaching credential.

(C) Complete one school year of classroom instruction in the district or county office of education for each year that he or she receives assistance for books, fees, and tuition while attending an institution of higher education under the program.

(3) To the extent that any participant does not fulfill his or her obligations, as set forth in paragraph (2), the participant shall be required to repay the assistance. If a participant is laid off, the participant may not

be required to repay the assistance until the participant is offered reemployment and has an opportunity to fulfill his or her obligations under this section.

(e) The commission shall contract with an independent evaluator with a proven record of experience in assessing career-advancement programs or teacher training programs to determine the success of the recruitment programs established pursuant to subdivision (b). The evaluation shall be made on an annual basis and shall include, but not be limited to, all of the following:

(1) The total cost per person participating in the program who successfully obtains a teaching credential, based upon all state, local, federal, and other sources of funding.

(2) The economic status of persons participating in the pilot program.

(3) A description of financial and other resources made available to each recruitment program by participating school districts or county offices of education, institutions of higher education, and other participating organizations.

(4) The extent to which pupil performance on standardized achievement tests has improved in classes taught by teachers who have successfully completed the program, in comparison to classes taught by other teachers who have equivalent teaching experience.

(5) The extent to which pupil dropout rates and other measures of delinquency have improved in classes taught by teachers who have successfully completed the program.

(6) The extent to which teachers who have successfully completed the program remain in the communities in which they reside and in which they teach.

(7) The attrition rate of teachers who have successfully completed the program.

(f) Each selected school district or county office of education shall report to the commission regarding the progress of each cohort of school paraprofessionals, and other information regarding its recruitment program as the commission may direct.

(g) No later than January 1 of each year, the commission shall report to the Legislature regarding the status of the pilot program, including, but not limited to, the number of school paraprofessionals recruited, the academic progress of the school paraprofessionals recruited, the number of school paraprofessionals recruited who are subsequently employed as teachers in the public schools, the degree to which the program meets the demand for bilingual and special education teachers, the degree to which the program or similar programs can meet that demand if properly funded and executed, and other effects upon the operation of the public schools.

(h) It is the intent of the Legislature that each fiscal year, funding for the California School Paraprofessional Teacher Training Program be allocated to the Commission on Teacher Credentialing for grants to school districts pursuant to this section. In no case shall grants to any school district exceed the equivalent of three thousand dollars ($3,000) annually per paraprofessional in the program. Funding for grants to school districts pursuant to this subdivision, shall be contingent upon an appropriation in the annual Budget Act.

SEC. 9. Section 52055.51 of the Education Code is amended to read:

52055.51. (a) Instead of the actions specified in subdivision (b) of Section 52055.5, and notwithstanding any other law, the Superintendent of Public Instruction, with the approval of the State Board of Education, may require the district to enter into a contract with a school assistance and intervention team no later than 30 days after the public release of the school's growth in API results or the next regularly scheduled meeting of the State Board of Education following the expiration of the 30 days if meeting the 30-day time limit would not provide the State Board of Education with sufficient time to comply with the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code). If the State Board of Education approves, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

(b) School assistance and intervention team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research based reform strategies and have proven successful expertise specific to the challenges inherent in state-monitored schools.

(c) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(d) Not later than 60 days after the assignment of a school assistance and intervention team, the team shall complete a report. The report shall include recommendations for corrective actions chosen from a range of

interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target.

(e) Not later than 90 days after assignment of the school assistance and intervention team, the governing board of the school district shall adopt the team's initial recommendations at a regularly scheduled meeting of the governing board. Any subsequent recommendations proposed by the school assistance and intervention team shall be submitted to the governing board and shall be adopted by the governing board within 30 days of the submission. The governing board may not place the adoption on the consent calendar. All recommendations adopted by the governing board shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(f) Following the governing board's adoption of the recommendations, the governing board may submit an appeal to the Superintendent of Public Instruction for relief from one or more of the recommendations. The Superintendent of Public Instruction, with approval of the State Board of Education, may grant relief from compliance with any of the school assistance and intervention team recommendations.

(g) If a school assistance and intervention team does not fulfill its legal obligations under this section, the governing board of the school district may seek permission from the Superintendent of Public Instruction, with the approval of the State Board of Education, to contract with a different school assistance and intervention team. Upon a finding that the school assistance and intervention team has not fulfilled its legal obligations under this section, the Superintendent of Public Instruction, with the approval of the State Board of Education, may remove the school assistance and intervention team from the state list of eligible providers.

(h) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(i) An action taken pursuant to this section may not increase local costs or require reimbursement by the Commission on State Mandates.

SEC. 10. Section 52055.52 of the Education Code, as added by Section 5 of Chapter 1035 of the Statutes of 2002, is amended and renumbered to read:

52055.55. (a) Thirty-six months after the Superintendent of Public Instruction assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the school makes significant growth on the Academic Performance Index, as determined by the State Board of Education, in two consecutive years, the school shall exit the Immediate Intervention/Underperforming Schools Program and is no longer subject to the requirements of the program.

(b) Thirty-six months after the Superintendent of Public Instruction assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the management team, trustee, or school assistance and intervention team fails to assist the school in making significant growth on the Academic Performance Index, as determined by the State Board of Education, the Superintendent of Public Instruction shall remove the management team, trustee, or school assistance and intervention team from providing services at the schoolsite and any other schoolsite. Additionally, the Superintendent of Public Instruction shall do at least one of the following:

(1) Require the school district to ensure, using available federal funds, that 100 percent of the teachers at the schoolsite are highly qualified, as defined by the state for the purposes of the federal No Child Left Behind Act (20 U.S.C. Sec. 6301 et seq.).

(2) Require the school to contract, using available federal funds, with an outside entity to provide supplemental instruction to high-priority pupils and assign a management team, trustee, or school assistance and intervention team that has demonstrated success with other state-monitored schools.

(3) Allow parents of pupils enrolled at the school to apply directly to the State Board of Education to establish a charter school at the existing schoolsite.

(4) Close the school.

SEC. 11. Section 52055.54 is added to the Education Code, to read:

52055.54. From funds appropriated each year in the annual Budget Act to the department pursuant to Section 1003 of Title 1 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301) or from state funds appropriated for this purpose, the following amounts shall be allocated by the department to school districts and county offices of education:

(a) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is required to enter into a contract with a school assistance and intervention team pursuant to subdivision (a) of Section 52055.51, for purposes of implementing any recommendations made by

the school assistance and intervention team in the report prepared by the team pursuant to subdivision (d) of Section 52055.51. School districts that receive funds under this subdivision shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received pursuant to this subdivision.

(b) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is managed in accordance with subparagraph (C) of paragraph (3) of subdivision (b) of Section 52055.5, for purposes of improving the academic performance of that school. School districts that receive funds under this subdivision shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received pursuant to this paragraph.

(c) Funding for the support of each school assistance and intervention team that enters into a contract with a school district pursuant to subdivision (a) of Section 52055.51 shall be allocated as follows:

(1) Seventy-five thousand dollars ($75,000) for each school assistance and intervention team assigned to an elementary or middle school.

(2) One hundred thousand dollars ($100,000) for each school assistance and intervention team assigned to a high school.

(3) If a school district determines that it needs more than the amounts specified in paragraphs (1) and (2), the school district may apply to the department for additional funding. The application shall include justification for the requested increase. The department and the Department of Finance shall review any applications and may provide funding up to a total funding level of one hundred twenty-five thousand dollars ($125,000), including the amount provided pursuant to paragraph (1) or (2).

(4) As a condition of receipt of funds pursuant to this subdivision, a school district shall provide an in-kind match of services, or a match of school district funds, in an amount equal to one dollar ($1) for every two dollars ($2) provided pursuant to paragraphs (1), (2), or (3).

SEC. 12. Section 52055.610 of the Education Code is amended to read:

52055.610. (a) The Superintendent of Public Instruction shall establish a procedure that is consistent with this article for the approval of applications and school action plans.

(b) Notwithstanding the existing application process established pursuant to Article 3 (commencing with Section 52053), in developing an action plan to be submitted with the application for funding pursuant to this article, a school may choose from the following options:

(1) A school district on behalf of an eligible school under its jurisdiction may elect to receive fifty thousand dollars ($50,000) as a planning grant from funds appropriated for purposes of this article.

These planning grant funds shall be used for technical assistance in the development of the school action plan. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other entity that has proven successful expertise specific to the challenges inherent in high-priority schools. If the school action plan is approved, the Superintendent of Public Instruction shall provide funding for its implementation. Planning grant funds, as well as other funds available to school districts pursuant to this article, may be used for ongoing technical assistance throughout the implementation of the action plan and continued participation in the program established pursuant to Article 3 (commencing with Section 52053) and the program established pursuant to this article.

(2) A school district, on behalf of an eligible school under its jurisdiction, may elect to forego the fifty thousand dollars ($50,000) planning grant and immediately submit its application and school action plan. If a school chooses this option, the Superintendent of Public Instruction shall take one of the following actions:

(A) Recommend approval of the application by the State Board of Education and action plan and provide funding for implementation of the school action plan.

(B) Request additional clarification and technical changes, after which the school and district shall resubmit the application and school action plan with the clarifications and changes for approval. If the application and school action plan is approved, the Superintendent of Public Instruction shall provide funding for implementation of the school action plan.

(C) Disapprove the plan in which case a school district on behalf of an eligible school under its jurisdiction shall receive a fifty thousand dollar ($50,000) planning grant that shall be used for technical assistance in the redevelopment of the school action plan according to the department's recommendations. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other entity that has proven expertise specific to the challenges inherent in high-priority schools.

(c) The following deadlines apply for the 2001–02 fiscal year:

(1) A school district on behalf of an eligible school under its jurisdiction shall submit the application and school action plan to the Superintendent of Public Instruction for review and approval by May 15, 2002.

(2) The Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval of applications and school action plans by June 15, 2002.

The State Board of Education shall approve or disapprove the application and action plan by June 30, 2002. Upon approval by the State Board of Education, the department shall allocate funding to schools for the implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by June 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan shall be allocated.

(3) If the Superintendent of Public Instruction takes the action specified in subparagraph (B) of paragraph (2) of subdivision (b), the school and school district shall resubmit the application and school action plan with the clarifications and changes for approval by August 1, 2002, and the Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval by September 1, 2002. The State Board of Education shall approve or disapprove the application and action plan by September 30, 2002. If the action plan is approved, the department shall allocate funding to the school district on behalf of an eligible school under its jurisdiction for implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by September 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan is to be allocated.

(4) A school district may request, and the State Board of Education may waive, the deadlines set forth in this subdivision.

(d) If a school receives implementation funding during the same fiscal year it receives a fifty thousand dollar ($50,000) planning grant, the planning grant shall be deducted from the amount of implementation funding provided to the school pursuant to subdivision (b) of Section 52055.600.

(e) Notwithstanding the deadlines specified in this section, if funding is made available for this purpose, the State Board of Education may approve additional applications in the 2002–03 and 2003–04 fiscal years from school districts that comply with the requirements of this article.

SEC. 13. Section 52055.650 of the Education Code is amended to read:

52055.650. (a) Section 52055.5 does not apply to a school participating in the High Priority School Grant Program.

(b) Twenty-four months after receipt of funding for implementation of the action plan pursuant to Sections 52054.5 and 52055.600 or no sooner than July 1, 2004, a school that has not met its growth targets each year shall be subject to review by the State Board of Education. This review shall include an examination of the school's progress relative to the components and reports made pursuant to Section 52055.640. The

Superintendent of Public Instruction, with the approval of the State Board of Education, may direct that the governing board of a school take appropriate action and adopt appropriate strategies to provide corrective assistance to the school in order to achieve the components and benchmarks established in the school's action plan.

(c) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion.

(d) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program and receive funding as specified in Sections 52054.5 and 52055.600.

(e) Notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall follow the course of action prescribed by paragraph (1) or (2) with respect to a school that does not meet its growth targets within the periods described in either subdivision (c) or (d), as applicable, or no later than July 1, 2005, and has failed to show significant growth, as determined by the State Board of Education.

(1) Require the district to enter into a contract with a school assistance and intervention team.

(A) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in high-priority schools.

(B) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(C) Not later than 60 days after the school's API becomes public, the team shall complete an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(D) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(E) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

(2) The Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to the school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (i). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(A) Revise attendance options for pupils to allow them to attend any public school in which space is available. If an additional attendance option is made available, this option may not require either the sending or receiving school district to incur additional transportation costs.

(B) Allow parents or guardians to apply directly to the State Board of Education for the establishment of a charter school and allow parents or guardians to establish the charter school at the existing schoolsite.

(C) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution.

However, the Superintendent of Public Instruction may not assume the management of the school.

(D) Reassign other certificated employees of the school.

(E) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(F) Reorganize the school.

(G) Close the school.

(f) In addition to the actions listed in subdivision (e), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to a school that does not meet its growth targets within the periods described in either subdivision (b) or (c), as applicable, and has failed to show significant growth, as determined by the State Board of Education.

(g) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (e), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(h) An action taken pursuant to subdivision (e), (f), or (g) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(i) An action taken pursuant to subdivision (e), (f), or (g) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

(j) (1) Notwithstanding subdivision (a), a school participating in the High Priority School Grant Program that received a planning grant pursuant to subdivision (f) of Section 52053 in the 1999–2000 fiscal year is eligible to receive funding pursuant to Section 52055.600 in the 2002–03 fiscal year only.

(2) Notwithstanding subdivision (a), a school participating in the High Priority School Grant Program that received a planning grant pursuant to subdivision (l) of Section 52053 in the 2000–01 fiscal year is eligible to receive funding pursuant to Section 52055.600 in the 2002–03 and 2003–04 fiscal years only.

(k) Notwithstanding the growth target timelines set forth in subdivisions (b), (c), (d), and (e), for a school that receives funds pursuant to Section 52055.600 during the 2002–03 or 2003–04 fiscal year, the growth target deadline for subdivision (b) is December 31, 2004, and the growth target deadline for subdivisions (c), (d), and (e) is December 31, 2005.

SEC. 14. Section 53081 of the Education Code is amended to read:

53081. The State Department of Education shall administer the School-to-Career Program and serve the following roles:

(a) Develop or participate in the development of accountability measurements specified in paragraph (8) of subdivision (b) of Section 53082 for school-to-career programs to ensure that the goals of the program are being met.

(b) Award grants to eligible applicants that meet or exceed the criteria specified in subdivision (b) of Section 53082.

(c) Provide technical and professional assistance to all local partnerships.

(d) Consult and offer advice to partnerships.

(e) Provide an informational link where local partnerships can collaborate and exchange successful and innovative methods and ideas.

SEC. 15. Section 53083 of the Education Code is amended to read:

53083. (a) Funds for school-to-career programs shall be appropriated to the department for distribution to local partnerships for the purposes specified in subdivision (e).

(b) Funds shall be awarded through a competitive grant process where only one local partnership can receive funds for a geographic area.

(c) Funds shall be awarded to local partnerships that demonstrate gains in accountability measurements specified in paragraph (8) of subdivision (b) of Section 53082.

(d) The department is not required to fund a geographic area if the department concludes that no grant application satisfactorily meets the requirements specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 53082.

(e) Funds received through the grant process shall be used to perform the critical functions of convening, connecting, measuring, and brokering specific services that serve to build a locally defined system that provides the connections between educators, employers, local government, and the community to improve public education for all pupils in the defined geographic area. Funds may be used for the following connecting activities:

(1) Matching pupils with work-based opportunities.

(2) Using schoolsite mentors as liaisons between educators, business, parents, and community partners.

(3) Providing technical assistance to help employers and educators design comprehensive school-to-career systems.

(4) Providing technical assistance to help teachers integrate school- and work-based learning as well as academic and occupational subject matter.

(5) Encouraging active business involvement in school- and work-based activities.

(6) Assisting pupils in finding appropriate work, continuing their education or training, and linking them to other community services.

(7) Evaluating post-program outcomes to assess program success, particularly with reference to selected populations.

(8) Linking existing youth development activities with employer and industry strategies to upgrade worker skills.

SEC. 16. Section 53084 of the Education Code is repealed.

SEC. 17. Section 53084 is added to the Education Code, to read:

53084. Funding for this chapter is contingent upon an appropriation for this purpose provided in the annual Budget Act or in any other statute.

SEC. 18. Section 54761.4 is added to the Education Code, to read:

54761.4. Notwithstanding any other law, until December 1, 2003, a school district may change its designation of supplemental grant funds, from any categorical education program to any other categorical education program or programs set forth in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761. If a school district does not notify the Superintendent of Public Instruction of a change of designation by December 1, 2003, the Superintendent of Public Instruction shall allocate funds as otherwise specified by the school district.

SEC. 19. Section 60422.1 is added to the Education Code, to read:

60422.1. (a) Notwithstanding subdivision (a) of Section 60422, a local governing board shall use funding received pursuant to this chapter to ensure pupils are provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 36 months after those materials are adopted by the State Board of Education.

(b) This section shall remain in effect only until June 30, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2005, deletes or extends that date.

SEC. 20. Section 60423 of the Education Code is amended to read:

60423. (a) Notwithstanding Section 60422 or any other law, for the 2002–03, 2003–04, and 2004–05 fiscal years only, a requirement that the governing board of a school district provide a pupil with standards-aligned instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, may be

satisfied if the governing board of a school district provides a pupil with standards-aligned instructional materials that were adopted by the State Board of Education pursuant to Chapter 481 of the Statutes of 1998.

(b) This section shall be in effect only until July 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2005, deletes or extends that date.

SEC. 21. Article 5 (commencing with Section 60650) of Chapter 5 of Part 33 of the Education Code is repealed.

SEC. 22. Section 69440 of the Education Code is amended to read:

69440. (a) Commencing with the 2001–02 academic year, and each academic year thereafter, Cal Grant T awards shall be used only for tuition and student fees for a maximum of one academic year of full-time attendance in a program of professional preparation that has been approved by the California Commission on Teacher Credentialing. The maximum award amount, and the total amount of funding, shall be determined each year in the annual Budget Act. As a condition of receiving a Cal Grant T award, a recipient shall teach for one year in a high-priority school, as defined in paragraph (3) of subdivision (c) of Section 44510, for each two thousand dollar ($2,000) incentive provided through the Cal Grant T Program, for a period not to exceed four years. Any recipient who fails to meet his or her teaching obligation shall repay the Cal Grant T award.

(b) The commission shall allocate Cal Grant T awards using academic criteria or criteria related to past performance similar to that used in awarding Cal Grant A awards for the 2000–01 academic year.

SEC. 23. Section 69999.3 is added to the Education Code, to read:

69999.3. No award may be made pursuant to this article based on a test taken in 2003. A pupil is not entitled to an award pursuant to this article based on a test taken in 2003.

SEC. 24. Section 84750 of the Education Code is amended to read:

84750. The board of governors, in accordance with the statewide requirements contained in subdivisions (a) to (j), inclusive, and in consultation with institutional representatives of the California Community Colleges and statewide faculty and staff organizations, so as to ensure their participation in the development and review of policy proposals, shall develop criteria and standards for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature, and for the purpose of allocating the state general apportionment revenues.

In developing the criteria and standards, the board of governors shall utilize and strongly consider the guidelines and work products of the Task Force on Community College Financing as established pursuant to Chapter 1465 of the Statutes of 1986, and shall complete the development of these criteria and standards, accompanied by the

necessary procedures, processes, and formulas for utilizing its criteria and standards, by March 1, 1990, and shall submit on or before that date a report on these items to the Legislature and the Governor.

The board of governors shall develop the criteria and standards within the following statewide minimum requirements:

(a) The calculations of each community college district's revenue level for each fiscal year shall be based on the level of general apportionment revenues (state and local) the district received for the prior year plus any amount attributed to a deficit of minimum workload growth, with revenue adjustments being made for increases or decreases in workload, for program improvement as authorized by this section or by any other provision of law, for inflation, and for other purposes authorized by law.

(b) (1) For credit instruction, the funding mechanism developed pursuant to this section shall recognize the needs among the major categories of operation of community colleges, with categories established for instruction, instructional services and libraries, student services, maintenance and operations, and institutional support.

(2) The board of governors may propose to the Legislature, for enactment by statute, other cost categories when adequate data exist.

(3) Funding for noncredit classes shall be determined as follows:

(A) The preliminary amount per noncredit full-time equivalent student (FTES) for 1991–92 shall be equal to the comparable amount for 1990–91 with increases corresponding to the cost-of-living adjustment (COLA) specified in subdivision (e) and corresponding to any program improvement provided to the maintenance and operations category for 1991–92.

(B) Funds for maintenance and operations shall be included in the funds derived under paragraph (4) of subdivision (c).

(C) Funds for institutional support will be derived as part of the computation under paragraph (5) of subdivision (c).

(D) From the preliminary amount described in subparagraph (A), a deduction shall be made corresponding to the amounts derived in subparagraphs (B) and (C), and the remainder shall be the funded amount per noncredit FTES for 1991–92.

(E) Changes in noncredit FTES shall result in adjustments to revenues as follows:

(i) Increases in noncredit FTES shall result in an increase in revenues in the year of the increase and at the average rate per noncredit FTES.

(ii) Decreases in noncredit FTES shall result in a revenue reduction in the year following the decrease and at the average rate per noncredit FTES.

(iii) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in noncredit FTES during the

three years following the initial year of decrease in noncredit FTES if there is a subsequent increase in FTES.

(4) Except as otherwise provided by statute, current categorical programs providing direct services to students, including extended opportunity programs and services, and disabled students programs and services, shall continue to be funded separately through the annual Budget Act, and shall not be assumed under budget formulas of program-based funding.

(5) District revenues shall be determined based on systemwide funding standards within the categories, and revenue adjustments shall occur based on distinct measures of workload applicable to each category.

(c) Workload measures applicable to each category shall be established with the following measures to be provided:

(1) For credit instruction, the workload measure shall be the credit FTES. Changes in credit FTES shall result in adjustments in revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average per FTES.

(B) Decreases in FTES shall result in a revenue reduction in the year following the decrease and at the district's average FTES.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in FTES during the three years following the initial year of decrease in FTES if there is a subsequent increase in FTES.

(2) For instructional services and libraries, the workload measure shall be the credit FTES. Changes in credit FTES with respect to instructional services and libraries shall result in adjustments to revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average rate per FTES.

(B) Decreases in FTES shall result in a revenue reduction in the year following the decrease and at the district's average per FTES.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decreases in FTES during the three years following the initial year of decreases in FTES if there is a subsequent increase in FTES.

(3) For student services, the workload measure shall be based on the numbers of credit students enrolled (headcount).

Changes in headcount shall result in adjustments to revenues as follows:

(A) Increases in headcount shall result in an increase in revenues in the year of the increase at the statewide average per headcount.

(B) Decreases in headcount shall result in a revenue reduction in the year following the decrease at the district's average per headcount.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in headcount during the three years following the initial year of decrease in headcount if there is a subsequent increase in headcount.

(4) For maintenance and operations, the workload measure shall be based on the number of square feet of owned or leased facilities. Changes in the number of square feet shall be adjusted as follows:

(A) Increases in the number of square feet shall result in an increase in revenue in the year that the increase occurs and at the average per square foot.

(B) Decreases in the number of square feet shall result in a decrease in revenue beginning July 1 of the first full year in which the square feet are no longer owned or leased and at the average rate per square foot.

(5) For institutional support, a single fixed percentage which shall apply to all districts shall be established based on the pattern from the most recent data. The percentage shall be obtained from statewide data by comparing expenditures for this category with the total revenue for all five categories.

(d) Funding standards, subject to the conditions and criteria of this section, shall be established by the board for the various categories of operation established pursuant to subdivision (b). In consultation as required by subdivision (e) of Section 70901, the board of governors shall annually request program improvement moneys to assist districts in meeting these standards.

(e) To the extent that funding is provided in the annual budget, revenue adjustments shall be made to reflect cost changes, using the same inflation adjustment as required for school districts pursuant to subdivision (b) of Section 42238.1.

(f) An adjustment for economies of scale for districts and colleges shall be provided.

(g) The statewide increase in workload of FTES and headcount shall be, at a minimum, the rate of change of the adult population as determined by the Department of Finance, and may be increased through the budget process to reflect other factors, including statewide priorities, the unemployment rate, and the number of students graduating from California high schools. The allocation of changes on a district-by-district basis shall be determined by the board of governors.

(h) For fiscal year 1991–92 or on the date Section 84750 is implemented by the board of governors in accordance with Section 70 of Chapter 973 of the Statutes of 1988, whichever is later, all districts shall receive at least the amount of revenue to which they would have been entitled pursuant to Article 1 (commencing with Section 84700) of

Chapter 5 of Part 50. Thereafter, allocations shall be made pursuant to this section, as implemented by the board of governors pursuant to the annual State Budget.

(i) Except as specifically provided by statute, regulations of the board of governors for determining and allocating the state general apportionment to the community colleges may not require district governing boards to expend the allocated revenues in specified categories of operation or according to the workload measures developed by the board of governors.

(j) As used in this section:

(1) ''Criteria'' means the definitions of elements of institutional practice or activity to be included in the categories of operation of community college districts.

(2) ''Program improvement'' means an increase in revenue which is allocated to all districts to fund standards adopted pursuant to subdivision (d). Program improvement also means an increase in revenue allocated to low revenue districts to bring them closer to the statewide average.

(3) ''Standard'' means the appropriate level of service in a category of operation of the community college districts.

SEC. 25. Chapter 7 (commencing with Section 99300) of Part 65 of the Education Code is repealed.

SEC. 26. Section 12.40 of Chapter 157 of the Statutes of 2003 is amended to read:

12.40. (a) (1) Notwithstanding any other law, not more than 10 percent of the amount apportioned to any school district, county office of education, or other educational agency under the programs funded in this act that were funded in Item 6110-230-0001 of Section 2.00 of SB 160 of the 1999–2000 Regular Session, as introduced on January 8, 1999, may be expended by that recipient for the purposes of any other program for which the recipient is eligible for funding under those items, except that the total amount of funding allocated to the recipient under this section that is expended by the recipient for the purposes of any of those programs may not exceed 115 percent of the amount of state funding allocated pursuant to the appropriations to that recipient for those programs in this act for the 2003–04 fiscal year.

(2) Notwithstanding paragraph (1), a school district, county office of education, or other educational agency that transferred more than the amount authorized in paragraph (1), for the programs specified in subdivision (b) in the 2002–03 fiscal year, may transfer from any program specified in subdivision (b) for expenditure for purposes of any other program specified in subdivision (b) up to the amount that was transferred from that program in the 2002–03 fiscal year under the provisions of Section 12.40 of the Budget Act of 2002 (Ch. 379, Stats.

of 2002) and may transfer into any program specified in subdivision (b) for expenditure for purposes of that program up to the amount that was transferred into that program in the 2002–03 fiscal year under the provisions of Section 12.40 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

(3) Notwithstanding any other law, for the 2003–04 fiscal year, local education agencies may also use the authority provided in paragraphs (1) and (2) to provide the funds necessary to initiate a conflict resolution program pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19 of the Education Code, and to continue to support following the three-to-five year state grant period, or to expand, a Healthy Start program pursuant to Chapter 5 (commencing with Section 8800) of Part 6 of the Education Code.

(b) The education programs that are eligible for the flexibility provided in subdivision (a) included the following items: Items 6110-108-0001, 6110-111-0001, 6110-116-0001, 6110-119-0001, 6110-120-0001, 6110-122-0001, 6110-124-0001, 6110-127-0001, 6110-128-0001, 6110-131-0001, 6110-132-0001, 6110-151-0001, 6110-163-0001, 6110-167-0001, 6110-181-0001, 6110-193-0001, 6110-197-0001, 6110-203-0001, 6110-224-0001, and 6110-209-0001 of this act.

(c) It is the intent of the Legislature that the authority in subdivision (a) shall be operative only for the 2003–04 fiscal year and are not intended to be operative in the 2004–05, or any subsequent, fiscal year.

(d) As a condition of receiving the funds provided for the programs identified in subdivision (b), local education agencies shall report to the State Department of Education by October 8, 2004, on any amounts shifted between these programs pursuant to the flexibility provided in subdivision (a). The Department of Education shall collect and provide this information to the Joint Legislative Budget Committee, chairs and vice chairs of the fiscal committees for education of the Legislature and the Department of Finance, by February 1, 2005.

SEC. 27. Section 37 of Chapter 227 of the Statutes of 2003 is amended to read:

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, 6110-189-0001, 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 (Ch. 157, Stats. 2003), and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2003 (Ch. 157, Stats. 2003) shall be zero percent for the 2003–04 fiscal year.

(b) Notwithstanding Section 42238.1 of the Education Code, the cost-of-living adjustment for special education programs funded by Item 6110-161-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003) shall be zero percent for the 2003–04 fiscal year.

(c) Notwithstanding Section 42238.1 of the Education Code or any other law, 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. 28. Notwithstanding any other law, a local educational agency that received funds pursuant to Chapter 3.44 (commencing with Section 44751) of Part 25 of the Education Code, as it existed January 1, 2003, may expend or encumber those funds through June 30, 2004.

SEC. 29. Notwithstanding any other law, for the 2003–04 fiscal year only, to the extent that funding appropriated for purposes of Article 4 (commencing with Section 52046) of Chapter 6 of Part 28 of the Education Code is reduced, a school district implementing a school improvement program is strongly encouraged to first reduce nonpersonnel expenditures supported by those funds. A school district may reduce personnel expenditures supported by funds received pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code but is strongly encouraged to do so only after it makes all possible reductions in nonpersonnel expenditures.

SEC. 30. Notwithstanding the inoperation and repeal, pursuant to Section 69999.5 of the Education Code, of the Governor's Scholars Program and the Governor's Distinguished Mathematics and Science Scholars Program, the Scholarshare Investment Board may continue to administer the scholarship accounts established pursuant to those programs for scholarships that were authorized and awarded prior to July 1, 2003. The Scholarshare Investment Board may administer those accounts in accordance with Article 20 (commencing with Section 69995) of Chapter 2 of Part 42 of the Education Code, as it read on January 1, 2003, for the duration of the scholarship awards including, but not limited to, dispensing qualified withdrawals of awards.

SEC. 31. The reduction in funding to regional occupational centers and programs and adult education programs by Items 6110-105-0001 and 6110-156-0001 of Section 2.00 of the Budget Act of 2003 as compared to funding for those items in the Budget Act of 2002 shall be administered by the Superintendent of Public Instruction as a reduction to the number of funded units of average daily attendance. The reduction shall be allocated on a pro rata basis, based on the number of units of average daily attendance funded in the 2002–03 fiscal year for each

regional occupational center and program and adult education program, exclusive of units of average daily attendance funded through CalWORKs reimbursements. The percentage of the reduction to each regional occupational center and program and adult education program shall be reflective of the percentage of the overall funding reduction to those centers and programs.

SEC. 32. The Legislature finds and declares that, with regard to Section 7 of this act, due to the unique fiscal circumstances concerning the West Contra Costa Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 574

An act to add Article 9.5 (commencing with Section 35277) to Chapter 2 of Part 21 of the Education Code, relating to school facilities.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

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

(a) Many cities in California face severe housing shortages.

(b) Residents of these cities are often unable to find affordable housing, and must pay far more than they can afford for scarce and often substandard housing.

(c) School construction projects in crowded urban areas often result in a loss of affordable housing units.

(d) Creating affordable replacement housing in crowded urban areas impacted by new school construction is a compelling community need.

(e) To the extent possible, school districts and local governments should work together to coordinate and facilitate the construction of replacement housing when residents are displaced.

(f) To the extent possible, the replacement housing should be built in the residents' existing neighborhoods.

(g) The state should facilitate and encourage collaboration between school districts and local governments.

SEC. 2. Article 9.5 (commencing with Section 35277) is added to Chapter 2 of Part 21 of the Education Code, to read:

Article 9.5. Schoolsite Replacement Housing

35277. For purposes of this article the following terms have the following meanings:

(a) ''Affordable housing cost'' has the same meaning as set forth in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code as applied to persons and families of low or moderate income.

(b) ''Affordable rent'' has the same meaning as set forth in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code as applied to persons and families of low or moderate income.

(c) ''Extremely low income households'' has the same meaning as set forth in Section 50106 of the Health and Safety Code.

(d) ''Local governing agency'' means a city in which a new schoolsite is located, or if a new schoolsite is located in an unincorporated area, the county in which the new schoolsite is located.

(e) ''New schoolsite'' means real property acquired by a school district on and after January 1, 2003, for construction of a new schoolsite or for expansion of an existing schoolsite

(f) ''New schoolsite replacement housing'' means housing to replace the residential dwelling units demolished or to be demolished in connection with a new schoolsite.

(g) ''Persons and families of low income'' has the same meaning as set forth in Section 50093 of the Health and Safety Code.

(h) ''Persons and families of low or moderate income'' has the same meaning as set forth in Section 50093 of the Health and Safety Code.

(i) ''Very low income households'' has the same meaning as set forth in Section 50105 of the Health and Safety Code.

(j) ''Vicinity of a new schoolsite'' means the area within the census tract in which a new schoolsite is located and the areas within the immediately adjacent census tracts.

35277.5. For purposes of this article, an extreme shortage of affordable housing exists if any of the following conditions exist:

(a) The vacancy rate for rental housing in the jurisdiction in which the new schoolsite is located is 5 percent or lower.

(b) The median rent in the Zip Code where the new replacement housing is located is more than 30 percent of the median income of the households displaced by the school construction.

(c) The occupancy rate for 10 percent or more of the dwelling units within the vicinity of the new schoolsite equals or exceeds 1.5 persons per room, excluding bathrooms, hallways, and porches.

35278. (a) If a school district has acquired a new schoolsite containing residential dwelling units, the local governing agency may,

consistent with this article, acquire real property for the purpose of new schoolsite replacement housing and utilize or convey the property according to this article, if all of the following conditions are met:

(1) The local governing agency has determined that an extreme shortage of affordable housing exists in the vicinity of the new schoolsite.

(2) The real property to be used for replacement housing is acquired by the local governing agency in the vicinity of a new schoolsite, or in an area designated in the local governing agency's replacement housing plan adopted pursuant to paragraph (1) of subdivision (e), within two years of the school district's acquisition of a possessory right to the new schoolsite.

(3) The combined area of the real property to be used for replacement housing acquired by the local governing agency pursuant to this article does not include any portion of the new schoolsite and does not, in acreage, exceed 150 percent of the area acquired by the school district for the new schoolsite.

(b) A local governing agency may rehabilitate, develop, or construct residential facilities on the property for the purpose of providing new schoolsite replacement housing as set forth in this article.

(c) Notwithstanding Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code or any other provision of law, a local governing agency that has acquired real property for new schoolsite replacement housing pursuant to this article may convey the property to an affiliated public agency for the purpose of providing new schoolsite replacement housing. An affiliated public agency that has acquired real property pursuant to this section may rehabilitate, develop, or construct residential facilities on the property for the purpose of providing new schoolsite replacement housing in compliance with this article.

(d) Notwithstanding Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code or any other provision of law, a local governing agency, or an affiliated public agency, that has acquired real property for new schoolsite replacement housing pursuant to this article, may sell, lease for no more than 99 years, jointly develop, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust, or otherwise, or otherwise dispose of the real property or any interest in that property, or any portion thereof, for the purpose of providing new schoolsite replacement housing through the rehabilitation, development, or construction of residential facilities or combined residential and commercial facilities on that property.

(e) (1) Any disposition of real property, pursuant to subdivision (d), acquired for new schoolsite replacement housing pursuant to this article

shall be in furtherance of a replacement housing plan. The local governing agency shall adopt a replacement housing plan for disposition of real property pursuant to this article, which shall meet all of the following requirements:

(A) The replacement housing plan shall include all of the following:

(i) A statement of the general location of housing to be developed pursuant to this section.

(ii) A description of the means of financing the development.

(iii) A finding that the actions to be taken pursuant to the plan do not require approval of the voters pursuant to Article XXXIV of the California Constitution, or that the approval has been or will be obtained.

(iv) A specification of the number of dwelling units housing persons and families of low income and persons and families of moderate income, respectively, that are planned for construction or rehabilitation.

(v) Provisions to ensure that persons displaced by the acquisition of a new schoolsite, and the acquisition of the new schoolsite replacement housing property pursuant to this article, shall have a right of first refusal for the purchase or rental of dwelling units developed in the replacement housing.

(vi) A description of any facilities for commercial use to be constructed in combination with the replacement housing.

(B) The number of dwelling units to be developed on the combined area of real property acquired pursuant to this article will be equal to a prescribed percentage, as determined by the local governing agency, but in no event less than the sum of both of the following:

(i) Seventy-five percent of the total number of dwelling units demolished or to be demolished in connection with construction or expansion of school facilities on the new schoolsite.

(ii) The total number of dwelling units on the new schoolsite replacement housing property to be acquired pursuant to this article.

(C) Unless the local governing agency prescribes a greater number pursuant to subparagraph (D), the number of dwelling units developed on the property acquired for new schoolsite replacement housing pursuant to this article that are available at affordable housing costs or affordable rents shall be greater than, or equal to, the lesser of either of the following:

(i) A number equal to 50 percent of the dwelling units developed on the property acquired for new schoolsite replacement housing pursuant to this article.

(ii) The number of households of persons and families of low, or moderate, income displaced by the acquisition of the new schoolsite property and by the acquisition of the property for new schoolsite replacement housing pursuant to this article.

(D) A local governing agency may require that all or any portion of the dwelling units, in addition to those required under subparagraph (C), be available at affordable housing cost or affordable rent to persons and families in lower income categories, including, persons and families of low income, very low income, or extremely low, income. This section does not prohibit a local governing agency from participating financially or otherwise to enable any housing developed pursuant to this article to serve households of lower income if the need for that housing is identified in, and consistent with, the replacement housing plan.

(2) For a reasonable period of time prior to adopting the replacement housing plan, the agency shall make available a draft of the proposed plan for review and comment by public agencies and the general public.

35278.5. This article does not require a local governing agency to acquire real property, develop replacement housing, or perform any other act pursuant to this article. A local governing agency may, at its option, take action pursuant to this article.

CHAPTER 575

An act to amend Section 4094 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 4094 of the Welfare and Institutions Code is amended to read:

4094. (a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

(2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility that is licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.

(4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.

(5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.

(d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment, staffing, and for the use of psychotropic medication, discipline, and restraints in the facilities. The standards shall also meet the requirements of Section 4094.5.

(e) (1) Until January 1, 2007, all of the following are applicable:

(A) A community treatment facility shall not be required by the State Department of Mental Health to have 24-hour onsite licensed nursing staff, but shall retain at least one full-time, or full-time equivalent, registered nurse onsite if both of the following are applicable:

(i) The facility does not use mechanical restraint.

(ii) The facility only admits children who have been assessed, at the point of admission, by a licensed primary care provider and a licensed psychiatrist, who have concluded, with respect to each child, that the child does not require medical services that require 24-hour nursing coverage. For purposes of this section, a ''primary care provider'' includes a person defined in Section 14254, or a nurse practitioner who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of care, and for initiating referral for specialist care.

(B) Other medical or nursing staff shall be available on call to provide appropriate services, when necessary, within one hour.

(C) All direct care staff shall be trained in first aid and cardiopulmonary resuscitation, and in emergency intervention techniques and methods approved by the Community Care Licensing Division of the State Department of Social Services.

(2) The State Department of Mental Health may adopt emergency regulations as necessary to implement this subdivision. 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 be exempt from review by the Office of Administrative Law and 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.

(f) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.

(g) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions are met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(h) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in In re Roger S. (1977) 19 Cal.3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including In re Michael E. (1975) 15 Cal.3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(i) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars ($45,000) is hereby appropriated annually

from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

CHAPTER 576

An act to amend Section 1950.5 of the Civil Code, relating to tenancy.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 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) (1) 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.

(2) 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.

(3) 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) Within three weeks after the tenant has vacated the premises, 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.

(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. 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 ($125).

(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 SB 90. 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 SB 90, in which case Section 1 of this bill shall not become operative.

CHAPTER 577

An act to amend Section 5443 of the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 5443 of the Business and Professions Code is amended to read:

5443. Nothing in this article prohibits either of the following:

(a) Any county from designating the districts or zones in which advertising displays may be placed or prohibited as part of a county land use or zoning ordinance.

(b) Any governmental entity from entering into a relocation agreement pursuant to Section 5412 or the department from allowing any legally permitted display to be increased in height at its permitted location or to be relocated if a noise attenuation barrier is erected in front of the display or if a building, construction, or structure, including, but not limited to, a barrier, bridge, overpass, or underpass, has been or is then being erected by any government entity that obstructs the display's visibility within 500 feet of the display and that relocated display or that action of the department would not cause a reduction in federal aid highway funds as provided in Section 131 of Title 23 of the United States Code or an increase in the number of displays within the jurisdiction of a governmental entity which does not conform to this article. Any increase in height permitted under this subdivision shall not be more than that necessary to restore the visibility of the display to the main-traveled way. An advertising display relocated pursuant to this subdivision shall comply with all of the provisions of Article 6 (commencing with Section 5350).

CHAPTER 578

An act to amend Sections 50675.14, 53315, and 53533 of the Health and Safety Code, and to amend Sections 5806 and 5814 of the Welfare and Institutions Code, relating to housing.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

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

(a) When people who are seriously mentally ill are homeless and do not have access to stable, affordable housing and the services they need, they frequently enter the criminal justice system or use costly emergency services, including emergency rooms, hospitals, mental health treatment facilities, shelters, and other services for crises that could have been avoided.

(b) Permanent supportive housing, which combines well managed affordable housing with supportive services that are designed to engage and stabilize persons who have been homeless and those with serious mental illness or other disabilities, has demonstrated effectiveness in improving housing outcomes and reducing utilization of costly emergency and inpatient services for the people who are able to access this housing.

(c) As counties have established programs of integrated services to serve persons who are seriously mentally ill and homeless or at risk of homelessness, they have frequently identified a shortage of housing options to meet the needs of this target population.

(d) Additional supportive housing is needed to end or prevent homelessness for many Californians who are seriously mentally ill, and the housing programs created or expanded by Proposition 46 provide critically needed resources to respond to this need.

(e) In order for Proposition 46 bond funds to be used effectively to create housing for individuals who are seriously mentally ill and homeless or at risk of homelessness, funding must be available to provide the supportive services needed by this target population who will be residing in this housing.

(f) Investments in permanent supportive housing will produce savings to the state, while reducing costs and burdens faced by local governments, health care facilities, businesses, and the public, by producing visible and measurable differences on the street, and in hospitals, jails, and state correctional facilities.

SEC. 2. Section 50675.14 of the Health and Safety Code is amended to read:

50675.14. (a) This section shall apply only to supportive housing projects funded pursuant to paragraph (3) of subdivision (a) of Section 53533.

(b) For purposes of this section, ''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 supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

(c) The criteria, established by the department, for selecting supportive housing projects shall give priority to the following:

(1) Supportive housing projects that house persons with disabilities who would otherwise be at high risk of homelessness, where the application for funding demonstrates collaboration with programs that meet the needs of the supportive housing residents' disabilities.

(2) Supportive housing projects that include a focus on measurable outcomes and a plan for evaluation, which evaluation shall be submitted by the borrowers, annually, to the department.

(d) The department may provide higher per-unit loan limits as reasonably necessary to provide and maintain rents that are affordable to the target population as defined in subdivision (d) of Section 53260.

(e) In an evaluation or ranking of a borrower's development and ownership experience, the department shall consider experience acquired in the prior 10 years.

(f) (1) A borrower shall, beginning the second year after supportive housing project occupancy, include the following data in his or her annual report to the department. However, a borrower who submits an annual evaluation pursuant to subdivision (c) may, instead, include this information in the evaluation:

(A) The length of occupancy by each supportive housing resident for the period covered by the report.

(B) Changes in each supportive housing resident's employment status during the previous year.

(C) Changes in each supportive housing resident's source and amount of income during the previous year.

(2) The department shall include aggregate data with respect to the supportive housing projects described in this section in the report that it submits to the Legislature pursuant to Section 50675.12.

(g) The department shall consider, commencing in the second year of the funding, the feasibility and appropriateness of modifying its regulations to increase the use of funds by small projects. In doing this, the department shall consider its operational needs and prior history of funding supportive housing facilities.

SEC. 3. Section 53315 of the Health and Safety Code is amended to read:

53315. This chapter 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. 4. 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 supportive housing projects for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, to serve individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness.

(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 home buyers who, as documented to the agency by a nonprofit organization certified and funded to provide home ownership 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 home ownership 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. 4.5. 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 Chapter 5 (commencing with Section 50600) of Part 2.

(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 Section 50843.

(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.

(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 supportive housing projects under the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, to serve individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness.

(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 Chapter 4.5 (commencing with Section 50860) of Part 1.

(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.

(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). The agency may transfer these moneys as often as quarterly in amounts that shall not exceed the dollar amount of new insurance written by the agency during the preceding quarter for loans for the purchase of homes made to owner-occupant borrowers with incomes not exceeding 120 percent of the area median income, divided by the risk-to-capital ratio required for the maintenance of satisfactory credit ratings from nationally recognized credit rating services.

(C) (i) Twelve million five hundred thousand dollars ($12,500,000) shall be reserved for downpayment assistance to low-income first-time home buyers who, as documented to the agency by a nonprofit organization certified and funded to provide home ownership counseling by a federally funded national nonprofit corporation, are purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received home ownership counseling from the nonprofit organization. Community revitalization areas shall be limited

to targeted neighborhoods identified by qualified nonprofit organizations as those neighborhoods in need of economic stimulation, renovation, and rehabilitation through efforts that include increased home ownership opportunities for low-income families.

(ii) Effective January 1, 2004, 50 percent of the funds available pursuant to clause (i) shall be available for downpayment assistance in an amount not to exceed 6 percent of the home sales price.

(iii) After 12 months of availability, if more than 50 percent of the funds set aside pursuant to clause (ii) have been encumbered, the agency shall discontinue that program and make all remaining funds available for downpayment assistance pursuant to clause (i). If, however, less than 50 percent of the funds allocated pursuant to clause (ii) are encumbered after that 12-month period, the agency may, at its sole discretion, either make all remaining funds provided pursuant to clause (i) available for the purpose of clause (ii), or may continue to implement clause (ii) until all of the funds allocated for that purpose as of January 1, 2004, have been encumbered.

(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. 5. Section 5806 of the Welfare and Institutions Code is amended to read:

5806. The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently, work, and reach their potential as productive citizens. The department shall provide annual oversight of grants issued pursuant to this part for compliance with these standards. These standards shall include, but are not limited to, all of the following:

(a) A service planning and delivery process that is target population based and includes the following:

(1) Determination of the numbers of clients to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic and citizen constituency groups as determined by the director.

(2) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services. Plans shall also contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services due to limited-English-speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(3) Provisions for services to meet the needs of target population clients who are physically disabled.

(4) Provision for services to meet the special needs of older adults.

(5) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate for the individual.

(6) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

(7) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(8) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that would still be received through other funds had eligibility not been terminated due to age.

(9) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(10) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(11) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(b) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive age,

gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

(1) Live in the most independent, least restrictive housing feasible in the local community, and for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(2) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(3) Create and maintain a support system consisting of friends, family, and participation in community activities.

(4) Access an appropriate level of academic education or vocational training.

(5) Obtain an adequate income.

(6) Self-manage their illness and exert as much control as possible over both the day-to-day and long-term decisions which affect their lives.

(7) Access necessary physical health care and maintain the best possible physical health.

(8) Reduce or eliminate serious antisocial or criminal behavior and thereby reduce or eliminate their contact with the criminal justice system.

(9) Reduce or eliminate the distress caused by the symptoms of mental illness.

(10) Have freedom from dangerous addictive substances.

(d) The individual personal services plan shall describe the service array that meets the requirements of subdivision (c), and to the extent applicable to the individual, the requirements of subdivision (a).

SEC. 6. Section 5814 of the Welfare and Institutions Code is amended to read:

5814. (a) (1) This part shall be implemented only to the extent that funds are appropriated for purposes of this part. To the extent that funds are made available, the first priority shall go to maintain funding for the existing programs that meet adult system of care contract goals. The next priority for funding shall be given to counties with a high incidence of persons who are severely mentally ill and homeless or at risk of homelessness, and meet the criteria developed pursuant to paragraphs (3) and (4).

(2) The director shall establish a methodology for awarding grants under this part consistent with the legislative intent expressed in Section 5802, and in consultation with the advisory committee established in this subdivision.

(3) (A) The director shall establish an advisory committee for the purpose of providing advice regarding the development of criteria for the award of grants, and the identification of specific performance measures

for evaluating the effectiveness of grants. The committee shall review evaluation reports and make findings on evidence-based best practices and recommendations for grant conditions. At not less than one meeting annually, the advisory committee shall provide to the director written comments on the performance of each of the county programs. Upon request by the department, each participating county that is the subject of a comment shall provide a written response to the comment. The department shall comment on each of these responses at a subsequent meeting.

(B) The committee shall include, but not be limited to, representatives from state, county, and community veterans' services and disabled veterans outreach programs, supportive housing and other housing assistance programs, law enforcement, county mental health and private providers of local mental health services and mental health outreach services, the Board of Corrections, the State Department of Alcohol and Drug Programs, local substance abuse services providers, the Department of Rehabilitation, providers of local employment services, the State Department of Social Services, the Department of Housing and Community Development, a service provider to transition youth, the United Advocates for Children of California, the California Mental Health Advocates for Children and Youth, the Mental Health Association of California, the California Alliance for the Mentally Ill, the California Network of Mental Health Clients, the Mental Health Planning Council, and other appropriate entities.

(4) The criteria for the award of grants shall include, but not be limited to, all of the following:

(A) A description of a comprehensive strategic plan for providing outreach, prevention, intervention, and evaluation in a cost appropriate manner corresponding to the criteria specified in subdivision (c).

(B) A description of the local population to be served, ability to administer an effective service program, and the degree to which local agencies and advocates will support and collaborate with program efforts.

(C) A description of efforts to maximize the use of other state, federal, and local funds or services that can support and enhance the effectiveness of these programs.

(5) In order to reduce the cost of providing supportive housing for clients, counties that receive a grant pursuant to this part after January 1, 2004, shall enter into contracts with sponsors of supportive housing projects to the greatest extent possible. Participating counties are encouraged to commit a portion of their grants to rental assistance for a specified number of housing units in exchange for the counties' clients having the right of first refusal to rent the assisted units.

(b) In each year in which additional funding is provided by the annual Budget Act the department shall establish programs that offer individual counties sufficient funds to comprehensively serve severely mentally ill adults who are homeless, recently released from a county jail or the state prison, or others who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided to them and who are severely mentally ill adults. For purposes of this subdivision, ''severely mentally ill adults'' are those individuals described in subdivision (b) of Section 5600.3. In consultation with the advisory committee established pursuant to paragraph (3) of subdivision (a), the department shall report to the Legislature on or before May 1 of each year in which additional funding is provided, and shall evaluate, at a minimum, the effectiveness of the strategies in providing successful outreach and reducing homelessness, involvement with local law enforcement, and other measures identified by the department. The evaluation shall include for each program funded in the current fiscal year as much of the following as available information permits:

(1) The number of persons served, and of those, the number who receive extensive community mental health services.

(2) The number of persons who are able to maintain housing, including the type of housing and whether it is emergency, transitional, or permanent housing, as defined by the department.

(3) (A) The amount of grant funding spent on each type of housing.

(B) Other local, state, or federal funds or programs used to house clients.

(4) The number of persons with contacts with local law enforcement and the extent to which local and state incarceration has been reduced or avoided.

(5) The number of persons participating in employment service programs including competitive employment.

(6) The number of persons contacted in outreach efforts who appear to be severely mentally ill, as described in Section 5600.3, who have refused treatment after completion of all applicable outreach measures.

(7) The amount of hospitalization that has been reduced or avoided.

(8) The extent to which veterans identified through these programs' outreach are receiving federally funded veterans' services for which they are eligible.

(9) The extent to which programs funded for three or more years are making a measurable and significant difference on the street, in hospitals, and in jails, as compared to other counties or as compared to those counties in previous years.

(10) For those who have been enrolled in this program for at least two years and who were enrolled in Medi-Cal prior to, and at the time they were enrolled in, this program, a comparison of their Medi-Cal

hospitalizations and other Medi-Cal costs for the two years prior to enrollment and the two years after enrollment in this program.

(11) The number of persons served who were and were not receiving Medi-Cal benefits in the 12-month period prior to enrollment and, to the extent possible, the number of emergency room visits and other medical costs for those not enrolled in Medi-Cal in the prior 12-month period.

(c) To the extent that state savings associated with providing integrated services for the mentally ill are quantified, it is the intent of the Legislature to capture those savings in order to provide integrated services to additional adults.

(d) Each project shall include outreach and service grants in accordance with a contract between the state and approved counties that reflects the number of anticipated contacts with people who are homeless or at risk of homelessness, and the number of those who are severely mentally ill and who are likely to be successfully referred for treatment and will remain in treatment as necessary.

(e) All counties that receive funding shall be subject to specific terms and conditions of oversight and training which shall be developed by the department, in consultation with the advisory committee.

(f) (1) As used in this part, ''receiving extensive mental health services'' means having a personal services coordinator, as described in subdivision (b) of Section 5806, and having an individual personal service plan, as described in subdivision (c) of Section 5806.

(2) The funding provided pursuant to this part shall be sufficient to provide mental health services, medically necessary medications to treat severe mental illnesses, alcohol and drug services, transportation, supportive housing and other housing assistance, vocational rehabilitation and supported employment services, money management assistance for accessing other health care and obtaining federal income and housing support, accessing veterans' services, stipends, and other incentives to attract and retain sufficient numbers of qualified professionals as necessary to provide the necessary levels of these services. These grants shall, however, pay for only that portion of the costs of those services not otherwise provided by federal funds or other state funds.

(3) Methods used by counties to contract for services pursuant to paragraph (2) shall promote prompt and flexible use of funds, consistent with the scope of services for which the county has contracted with each provider.

(g) Contracts awarded pursuant to this part shall be exempt from the Public Contract Code and the state administrative manual and shall not be subject to the approval of the Department of General Services.

(h) Notwithstanding any other provision of law, funds awarded to counties pursuant to this part and Part 4 (commencing with Section 5850) shall not require a local match in funds.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 53533 of the Health and Safety Code proposed by both this bill and AB 304. 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 53533 of the Health and Safety Code, and (3) this bill is enacted after AB 304, in which case Section 4 of this bill shall not become operative.

CHAPTER 579

An act to amend Section 1374.34 of the Health and Safety Code, relating to health care.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 1374.34 of the Health and Safety Code is amended to read:

1374.34. (a) Upon receiving the decision adopted by the director pursuant to Section 1374.33 that a disputed health care service is medically necessary, the plan shall promptly implement the decision. In the case of reimbursement for services already rendered, the plan shall reimburse the provider or enrollee, whichever applies, within five working days. In the case of services not yet rendered, the plan shall authorize the services within five working days of receipt of the written decision from the director, or sooner if appropriate for the nature of the enrollee's medical condition, and shall inform the enrollee and provider of the authorization in accordance with the requirements of paragraph (3) of subdivision (h) of Section 1367.01.

(b) A plan shall not engage in any conduct that has the effect of prolonging the independent review process. The engaging in that conduct or the failure of the plan to promptly implement the decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the plan shall be subject to an administrative penalty of not less than five thousand dollars ($5,000) for each day that the decision is not implemented. Administrative penalties shall be deposited in the State Managed Care Fund.

(c) The director shall require the plan to promptly reimburse the enrollee for any reasonable costs associated with those services when the director finds that the disputed health care services were a covered benefit under the terms and conditions of the health care service plan contract, and the services are found by the independent medical review organization to have been medically necessary pursuant to Section 1374.33, and either the enrollee's decision to secure the services outside of the plan provider network was reasonable under the emergency or urgent medical circumstances, or the health care service plan contract does not require or provide prior authorization before the health care services are provided to the enrollee.

(d) In addition to requiring plan compliance regarding subdivisions (a), (b), and (c) the director shall review individual cases submitted for independent medical review to determine whether any enforcement actions, including penalties, may be appropriate. In particular, where substantial harm, as defined in Section 3428 of the Civil Code, to an enrollee has already occurred because of the decision of a plan, or one of its contracting providers, to delay, deny, or modify covered health care services that an independent medical review determines to be medically necessary pursuant to Section 1374.33, the director shall impose penalties.

(e) Pursuant to Section 1368.04, the director shall perform an annual audit of independent medical review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if a plan repeatedly fails to act promptly and reasonably to resolve grievances associated with a delay, denial, or modification of medically necessary health care services when the obligation of the plan to provide those health care services to enrollees or subscribers is reasonably clear.

CHAPTER 580

An act to amend and renumber Section 8820 of, and to add Chapter 5.1 (commencing with Section 8820) to Part 6 of, the Education Code, relating to arts education.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 8820 of the Education Code is amended and renumbered to read:

8819.5. This chapter 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. 2. Chapter 5.1 (commencing with Section 8820) is added to Part 6 of the Education Code, to read:

CHAPTER 5.1. ARTS WORK VISUAL AND PERFORMING ARTS EDUCATION PROGRAM

8820. (a) There is hereby established the Arts Work Visual and Performing Arts Education Program, to be administered by the State Department of Education, for the purposes of awarding grants to local educational agencies to develop their capacity to implement high-quality instructional programs that are based on the state adopted visual and performing arts content standards for pupils in kindergarten and grades 1 to 12, inclusive. A grant recipient shall use funds awarded pursuant to this chapter to establish a standards based visual and performing arts program and is encouraged to secure funds for continuing the program.

(b) School districts and county offices of education in collaboration with one or more school districts are eligible to participate in the program.

8825. An eligible applicant may submit a project proposal that addresses one or more of the following areas:

(a) Arts education programs that are aligned to the state adopted visual and performing arts content standards and framework.

(b) Pupil assessment in the arts.

(c) Participation in local and state networks to create comprehensive standards based arts education programs.

(d) Expanding the capacity to assist pupils in achieving the state adopted visual and performing arts content standards.

(e) Developing an online statewide digital visual and performing arts resource center.

(f) Expanding arts education programs developed through participation in the Local Arts Education Partnership Program as set forth in Article 2 (commencing with Section 8757.10) of Chapter 9 of Division 1 of Title 2 of the Government Code.

8830. The Superintendent of Public Instruction shall select a panel of experts that shall evaluate the project proposals and select grant

recipients. Evaluation of proposals and selection of grant recipients shall be based on the following criteria:

(a) The arts education policy adopted by the applicant.

(b) An assessment by the applicant of its existing arts education program. The assessment shall consider the degree to which the program implements the state adopted visual and performing arts content standards and framework and shall use any other criteria developed by the State Department of Education.

(c) The commitment and ability of the applicant to implement a comprehensive, sequential arts education program.

(d) The degree to which the proposed program is based on the state adopted visual and performing arts content standards.

(e) The commitment of participating schools, including, but not limited to, the use of professional staff development.

(f) The extent to which program outcomes and activities are aligned with the assessment of the current program and stated needs.

(g) Evidence that the arts instructional program occurs primarily during the regular schoolday.

(h) The inclusion of pupil assessment and program evaluation components that are clearly linked to the project goals and objectives.

(i) The description of plans to obtain future funding and support to continue, sustain, and expand the work begun under the project.

CHAPTER 581

An act to amend Sections 19210, 19211, 19212, 19213, 19215, and 19216 of the Health and Safety Code, relating to water heaters.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 19210 of the Health and Safety Code is amended to read:

19210. (a) The Legislature finds and declares that there exists a serious threat of fire, explosion, or electrocution to the people of California from water heaters that overturn or experience damage to the plumbing or electrical wiring during an earthquake, and that a large number of structures will suffer damage from water heaters due to the lack of adequate strapping or bracing.

(b) The Legislature further finds and declares that it is the goal of the State of California to reduce earthquake hazards in this state.

(c) The Legislature further finds and declares that the original state policy goal of having all water heaters strapped or properly anchored by the year 2000 has not been achieved, thereby exposing the residents of California to a continuing serious risk of injury or damage from water heaters overturned or demolished during earthquakes.

(d) The Legislature further finds and declares that occupants of rental housing in this state are vulnerable to the threat of fire, explosion, or electrocution from water heaters that overturn or experience damage during an earthquake, and are not authorized to strap, brace, or anchor water heaters in their units without the owner's advance approval, thus exposing them to hazardous conditions that they cannot mitigate.

(e) It is the intent of the Legislature that compliance with Section 19211 shall not result in the displacement of existing households.

SEC. 2. Section 19211 of the Health and Safety Code is amended to read:

19211. (a) Notwithstanding Section 19100, all new and replacement water heaters, and all existing residential water heaters, shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. At a minimum, any water heater shall be secured in accordance with the California Plumbing Code, or modifications made thereto by a city, county, or city and county pursuant to Section 17958.5.

(b) The seller of any real property containing a water heater shall certify to the prospective purchaser that this section has been complied with. This certification shall be made in writing, and may be included in existing transactional documents, including, but not limited to, the Homeowner's Guide to Earthquake Safety published pursuant to Section 10149 of the Business and Professions Code, a real estate sales contract or receipt for deposit, or a transfer disclosure statement pursuant to Section 1102.6 or 1102.6a of the Civil Code.

(c) An owner of a residential rental property shall not evict any person on the basis that the eviction is required in order to comply with this section.

(d) For the purposes of subdivision (a), ''water heater'' means any standard water heater with a capacity of not more than 120 gallons for which a preengineered strapping kit is readily available.

(e) Notwithstanding Section 669 of the Evidence Code, the failure of any person to comply with this section shall not create a presumption of a failure by that person to exercise due care.

(f) Any building or portion thereof, including any dwelling unit, guestroom, suite of rooms, or portions thereof, or the premises on which it is located is deemed to be a nuisance if it is in violation of this section. The owner or the owner's agent shall have the right to correct any violation of subdivision (a) pursuant to Section 17980.

SEC. 3. Section 19212 of the Health and Safety Code is amended to read:

19212. All water heaters manufactured for sale in California on or after July 1, 1991, shall include a statement in the installation instructions that water heater units must be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. The instructions provided by the manufacturer may include a reproduction of the generic installation instructions and standard details as prepared by the Division of the State Architect in accordance with Section 19215.

SEC. 4. Section 19213 of the Health and Safety Code is amended to read:

19213. Manufacturers shall add language to their instruction label on the front of the water heater that discloses the danger of falling or horizontal displacement due to an earthquake. The label shall contain the following language:

WARNING: THIS WATER HEATER MUST BE BRACED, ANCHORED, OR STRAPPED TO AVOID FALLING OR MOVING DURING AN EARTHQUAKE. SEE INSTRUCTIONS FOR CORRECT INSTALLATION PROCEDURES.

SEC. 5. Section 19215 of the Health and Safety Code is amended to read:

19215. The Division of the State Architect shall prepare generic installation instructions with standard details illustrating the strapping, bracing, and anchoring of water heaters for typical installations in single-family homes that comply with the requirements of the model codes. These details shall be made available for reproduction to manufacturers and appliance retailers at a cost to cover the state's cost to prepare the details, and respond to requests.

SEC. 6. Section 19216 of the Health and Safety Code is amended to read:

19216. At the point of sale, the retailer may provide the consumer with generic installation instructions with standard details approved by the Division of the State Architect. If provided, these generic instructions are intended to be provided to the consumer as a guide, and are not intended to supersede local codes. The retailer and manufacturer are deemed not to be liable for the generic instructions provided to consumers as long as these have been approved by the Division of the State Architect, as complying with the requirements of the model code in force on the date of approval.

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 582

An act to amend Sections 1971, 2154.2, 2201, and 3516.1 of the Business and Professions Code, to amend Section 92725 of the Education Code, and to amend Sections 124425, 124760, 124765, 127755, 127928, 128040, 128205, 128215, 128235, 128260, 128330, and 128385 of, to add Section 128207 to, and to add Article 11 (commencing with Section 1339.50) to Chapter 2 of Division 2 of, the Health and Safety Code, relating to health care.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 1971 of the Business and Professions Code is amended to read:

1971. For the purposes of this article, the following terms have the following meanings:

(a) ''Board'' means the Dental Board of California.

(b) ''Office'' means the Office of Statewide Health Planning and Development.

(c) ''Program'' means the California Dental Corps Loan Repayment Program.

(d) ''Dentally underserved area'' means a geographic area eligible to be designated as having a shortage of dental professionals pursuant to Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for dentists exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128224 of the Health and Safety Code.

(e) ''Dentally underserved population'' means persons without dental insurance and persons eligible for the Denti-Cal and Healthy Families Programs who are population groups described as having a shortage of dental care professionals in Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations.

(f) ''Practice setting'' means either of the following:

(1) A community clinic, as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population.

(2) A dental practice or dental corporation, as defined in Section 1800 of this code, located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population.

(g) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(h) ''Fund'' means the State Dentistry Fund.

(i) ''Account'' means the Dentally Underserved Account which is contained within the fund.

SEC. 2. Section 2154.2 of the Business and Professions Code is amended to read:

2154.2. For the purposes of this article, the following terms have the following meanings:

(a) ''Division'' means the Division of Licensing.

(b) ''Office'' means the Office of Statewide Health Planning and Development (OSHPD).

(c) ''Program'' means the California Physician Corps Loan Repayment Program.

(d) ''Medically underserved area'' means an area as defined in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(e) ''Medically underserved population'' means the Medi-Cal, Healthy Families, and uninsured populations.

(f) ''Practice setting'' means either of the following:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located

in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(g) ''Primary specialty'' means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(h) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(i) ''Fund'' means the Contingent Fund of the Medical Board of California.

(j) ''Account'' means the Medically Underserved Account which is contained within the fund.

SEC. 3. Section 2201 of the Business and Professions Code is amended to read:

2201. For the purposes of this article:

(a) ''Commission'' means the California Healthcare Workforce Policy Commission.

(b) ''Division'' means the Division of Licensing of the Medical Board of California.

(c) ''Practice of medicine'' or ''medical practice'' means all activities authorized by a physician's and surgeon's certificate, except activities performed in the course of employment as a public health officer, as a medical school faculty member where teaching time is more than 25 percent of the working day, or as a resident or first-year postgraduate trainee.

(d) ''Primary care services'' means those medical services involving the specialties of general practice, family practice, general internal medicine, obstetrics, gynecology, and general pediatrics.

SEC. 4. Section 3516.1 of the Business and Professions Code is amended to read:

3516.1. (a) (1) Notwithstanding any other provision of law, a physician who provides services in a medically underserved area may supervise not more than four physician assistants at any one time.

(2) As used in this section, ''medically underserved area'' means a ''health professional(s) shortage area'' (HPSA) as defined in Part 5 (commencing with Section 5.1) of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare

Workforce Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(b) This section 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 dates on which it becomes inoperative and is repealed.

SEC. 5. Section 92725 of the Education Code is amended to read:

92725. (a) The program shall be considered successful if, after implementation of the program, all of the following occur:

(1) There is a 10 percent or greater increase in the rate of program graduates who choose to practice primary care over the average number of program graduates who chose to practice primary care during the previous five years.

(2) There is a decrease in the use of emergency room facilities for nonemergency procedures by persons served by the program from the use of emergency room facilities for nonemergency procedures during the previous five years.

(3) Families served by the program have received expanded health services without an increase in per capita health costs.

(b) Based on the evaluation of the program by the university pursuant to Section 92724, the Office of Statewide Health Planning and Development, in consultation with the California Healthcare Workforce Policy Commission, shall recommend to the Legislature on or before January 1, 1998, whether funding for the program should be expanded to include other medical schools.

(c) If the recommendation is made to expand the program pursuant to subdivision (b), it is the intent of the Legislature that the program be expanded to allow private medical schools and private schools of nursing to participate in the program in order to permit substantially all students who are training to become physicians and surgeons, nurse practitioners, or physician assistants to receive a portion of their training in a community-based education program.

SEC. 6. Article 11 (commencing with Section 1339.50) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 11. Payers' Bill of Rights

1339.50. This article shall be known and may be cited as the Payers' Bill of Rights.

1339.51. (a) (1) Beginning July 1, 2004, a hospital, as defined in paragraph (2) of subdivision (b), shall make a written or electronic copy of its charge description master available, either by posting an electronic copy of the charge description master on the hospital's Internet Web site,

or by making one written or electronic copy available at the hospital location.

(2) A small and rural hospital, as defined in Section 124840, shall be exempt from paragraph (1).

(b) For purposes of this article, the following definitions shall apply:

(1) ''Charge description master'' means a uniform schedule of charges represented by the hospital as its gross billed charge for a given service or item, regardless of payer type.

(2) ''Hospital'' means a hospital, as defined in subdivision (a), (b), or (f) of Section 1250, that uses a charge description master.

(3) ''Office'' means the Office of Statewide Health Planning and Development.

(c) The hospital shall post a clear and conspicuous notice in its emergency department, if any, in its admissions office, and in its billing office that informs patients that the hospital's charge description master is available in the manner described in subdivision (a).

(d) Any information about charges provided pursuant to subdivision (a) shall include information about where to obtain information regarding hospital quality, including hospital outcome studies available from the office and hospital survey information available from the Joint Commission for Accreditation of Healthcare Organizations.

1339.52. A hospital may not condition acceptance of a contract with a health care service plan or health insurer upon the health care service plan or health insurer waiving any provision of this article.

1339.54. Any person may file a claim with the department alleging a violation of this article. The department shall investigate and inform the complaining person of its determination whether a violation has occurred and what action it will take.

1339.55. (a) Beginning July 1, 2004, each hospital shall file a copy of its charge description master annually with the office, in a format determined by the office.

(b) Each hospital shall calculate an estimate of the percentage increase in the hospital's gross revenue due to any price increase for charges for patient services during the 12-month period beginning with the effective date of the charge description master filed with the office. Each hospital shall file the calculation and supporting documentation with the office, in a form prescribed by the office, at the time that the charge description master is filed. The office may compile and publish this information on its Internet Web site.

1339.56. Each hospital shall compile a list of the charges for 25 services or procedures commonly charged to patients. Beginning July 1, 2004, each hospital shall make this list available to any person upon request. Each hospital shall file this list annually with the office, in a form prescribed by the office, along with the charge description master.

After reviewing hospital filings, the office may develop a uniform reporting form for the 25 services or procedures most commonly charged to patients, may require hospitals to file this form with the office in a form prescribed by the office, and may require hospitals to provide patients with the charges for these 25 services or procedures.

1339.57. The office may compile a list of the 10 most common Medicare diagnostic related groups (DRGs) and the average charge for each of these DRGs per hospital. The office may publish this information on its Internet Web site.

1339.58. Any information provided by the office on its Internet Web site pursuant to Section 1339.56 or 1339.57 may inform persons where quality of care information about hospitals may be obtained, including hospital outcome studies available from the office and hospital survey information available from the Joint Commission for Accreditation of Healthcare Organizations.

1339.59. A hospital shall be in violation of this article if it knowingly or negligently fails to comply with the requirements of this article.

SEC. 7. Section 124425 of the Health and Safety Code is amended to read:

124425. (a) It is the intent of the Legislature that funds authorized by the Primary Care Services Act (Section 27) be provided to organizations and agencies that are located in underserved areas or that are serving population groups identified pursuant to subdivision (b).

(b) Every two years the director shall develop a list of underserved rural and urban areas and underserved population groups. The director shall take into consideration the list of urban and rural areas designated as medically underserved by the California Healthcare Workforce Policy Commission and by the office and federal medically underserved areas and population groups designated by federal agencies.

(c) The director shall develop the list of underserved rural and urban areas and underserved population groups, set forth in subdivision (b), after consulting and receiving written recommendations from the Primary Care Clinics Advisory Committee and after consulting with appropriate groups and individuals, including individuals representing underserved populations and local government.

SEC. 8. Section 124760 of the Health and Safety Code is amended to read:

124760. The California Healthcare Workforce Policy Commission shall establish a plan that integrates family practice residencies and other health sciences education programs established in rural areas pursuant to Article 8 (commencing with Section 31910) of Chapter 5 of Division 5 of Division 22 of the Education Code with the health services provided pursuant to Article 3 (commencing with Section 124700).

SEC. 9. Section 124765 of the Health and Safety Code is amended to read:

124765. The California Healthcare Workforce Policy Commission, in coordination with the Rural Health Section of the department, shall designate the geographical rural areas within California where unmet priority need for medical services exists.

SEC. 10. Section 127755 of the Health and Safety Code is amended to read:

127755. The office shall consult with the California Healthcare Workforce Policy Commission, health systems agencies, and other appropriate organizations in the preparation of this plan.

SEC. 11. Section 127928 of the Health and Safety Code is amended to read:

127928. For purposes of this part, the following terms have the following meanings:

(a) ''Program'' means the California Medical and Dental Student Loan Repayment Program of 2002.

(b) (1) ''Medically underserved area'' means an area as defined in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exists as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(2) ''Dentally underserved area'' means a geographic area eligible to be designated as having a shortage of dental professionals pursuant to Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for dentists exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128224 of the Health and Safety Code.

(c) (1) ''Medically underserved population'' means the Medi-Cal, Healthy Families and uninsured population.

(2) ''Dentally underserved population'' means persons without dental insurance and persons eligible for the Denti-Cal and Healthy Families Programs who are population groups described as having a shortage of dental care professionals in Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations.

(d) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000 eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(e) ''Office'' means the Office of Statewide Health Planning and Development.

SEC. 12. Section 128040 of the Health and Safety Code is amended to read:

128040. (a) The Office of Statewide Health Planning and Development shall report to the Legislature on or before June 30, 2002, on the feasibility of establishing a California dental loan forgiveness program utilizing the same general guidelines applicable to the federal National Health Service Corps State Loan Repayment Program (42 U.S.C.A. Sec. 254q-1; 42 C.F.R., Part 62, Subpart C (commencing with Section 62.51)), except as follows:

(1) A dentist shall be eligible to participate in the loan forgiveness program if he or she provides full-time or half-time dental services in either of the following:

(A) A dental health professional shortage area (DHPSA), established pursuant to Section 254e(a) of Title 42 of the United States Code.

(B) An area of the state where unmet priority needs for dentists exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

(2) Matching funds to repay a portion of the dentist's outstanding loan amount shall be required from the practice site areas or from other private nonprofit sources.

(3) A qualifying practice site shall include a private dental practice.

(b) (1) The report required under subdivision (a) shall include all of the following:

(A) A projection of the dentist-to-population ratio for California in the next decade.

(B) A determination of the future need for dentists and dental care in underserved communities. The office shall work collaboratively with organizations that represent providers of dental services to underserved communities in making this determination.

(C) A report on the utilization by dentists of tuition loan repayment programs at the federal and state level and identify the barriers to full utilization of these loan repayment programs.

(D) A report on the projected cost increase of dental school education at public and private postsecondary educational institutions.

(E) A report on the implications of administering an additional program, including a cost analysis.

(2) The report also shall include recommendations on whether a program described in subdivision (a) should be established and, if so, suggested funding sources. In making its recommendations, the office shall consider the impact of the program on access to dental services in areas of the state that currently have a shortage of dentists.

SEC. 13. Section 128205 of the Health and Safety Code is amended to read:

128205. As used in this article, and Article 2 (commencing with Section 128250), the following terms mean:

(a) ''Family physician'' means a primary care physician who is prepared to and renders continued comprehensive and preventative health care services to families and who has received specialized training in an approved family practice residency for three years after graduation from an accredited medical school.

(b) ''Associated'' and ''affiliated'' mean that relationship that exists by virtue of a formal written agreement between a hospital or other health care delivery system and an approved medical school which pertains to the family practice training program for which state contract funds are sought. This definition shall include agreements that may be entered into subsequent to October 2, 1973, as well as those relevant agreements that are in existence prior to October 2, 1973.

(c) ''Commission'' means the California Healthcare Workforce Policy Commission.

(d) ''Programs that train primary care physician's assistants'' means a program that has been approved for the training of primary care physician assistants pursuant to Section 3513 of the Business and Professions Code.

(e) ''Programs that train primary care nurse practitioners'' means a program that is operated by a California school of medicine or nursing, or that is authorized by the Regents of the University of California or by the Trustees of the California State University, or that is approved by the Board of Registered Nursing.

SEC. 14. Section 128207 is added to the Health and Safety Code, to read:

128207. Any reference in any code to the Health Manpower Policy Commission is deemed a reference to the California Healthcare Workforce Policy Commission.

SEC. 15. Section 128215 of the Health and Safety Code is amended to read:

128215. There is hereby created a California Healthcare Workforce Policy Commission. The commission shall be composed of 10 members who shall serve at the pleasure of their appointing authorities:

(a) Eight members appointed by the Governor, as follows:

(1) One representative of the University of California medical schools, from a nominee or nominees submitted by the University of California.

(2) One representative of the private medical or osteopathic schools accredited in California from individuals nominated by each of these schools.

(3) One representative of practicing family physicians.

(4) One representative who is a practicing osteopathic physician or surgeon and who is board certified in either general or family practice.

(5) One representative of undergraduate medical students in a family practice program or residence in family practice training.

(6) One representative of trainees in a primary care physician's assistant program or a practicing physician's assistant.

(7) One representative of trainees in a primary care nurse practitioners program or a practicing nurse practitioner.

(8) One representative of the Office of Statewide Health Planning and Development, from nominees submitted by the office director.

(b) Two consumer representatives of the public who are not elected or appointed public officials, one appointed by the Speaker of the Assembly and one appointed by the Chairperson of the Senate Committee on Rules.

(c) The Chief of the Health Professions Development Program in the Office of Statewide Health Planning and Development, or the chief's designee, shall serve as executive secretary for the commission.

SEC. 16. Section 128235 of the Health and Safety Code is amended to read:

128235. Pursuant to this article and Article 2 (commencing with Section 128250), the Director of the Office of Statewide Health Planning and Development shall do all of the following:

(a) Determine whether family practice, primary care physician assistant training program proposals, and primary care nurse practitioner training program proposals submitted to the California Healthcare Workforce Policy Commission for participation in the state medical contract program established by this article and Article 2 (commencing with Section 128250) meet the standards established by the commission.

(b) Select and contract on behalf of the state with accredited medical schools, programs that train primary care physician assistants, programs that train primary care nurse practitioners, hospitals, and other health care delivery systems for the purpose of training undergraduate medical students and residents in the specialty of family practice. Contracts shall be awarded to those institutions that best demonstrate the ability to provide quality education and training and to retain students and residents in specific areas of California where there is a recognized unmet priority need for primary care family physicians. Contracts shall be based upon the recommendations of the commission and in conformity with the contract criteria and program standards established by the commission.

(c) Terminate, upon 30 days' written notice, the contract of any institution whose program does not meet the standards established by the commission or that otherwise does not maintain proper compliance with this part, except as otherwise provided in contracts entered into by the

director pursuant to this article and Article 2 (commencing with Section 128250).

SEC. 17. Section 128260 of the Health and Safety Code is amended to read:

128260. As used in this article, unless the context otherwise requires, the following definitions shall apply:

(a) ''Commission'' means the California Healthcare Workforce Policy Commission.

(b) ''Director'' means the Director of Statewide Health Planning and Development.

(c) ''Medically underserved designated shortage area'' means any of the following:

(1) An area designated by the commission as a critical health manpower shortage area.

(2) A medically underserved area, as designated by the United States Department of Health and Human Services.

(3) A critical manpower shortage area, as defined by the United States Department of Health and Human Services.

(d) ''Primary care physician'' means a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for care by other specialists. A primary care physician shall be a board-certified or board-eligible general internist, general pediatrician, general obstetrician-gynecologist, or family physician.

SEC. 18. Section 128330 of the Health and Safety Code is amended to read:

128330. As used in this article:

(a) ''Board'' means the Board of Trustees of the Health Professions Education Foundation.

(b) ''Commission'' means the California Healthcare Workforce Policy Commission.

(c) ''Director'' means the Director of the Office of Statewide Health Planning and Development.

(d) ''Foundation'' means the Health Professions Education Foundation.

(e) ''Health professions'' or ''health professionals'' means physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, dentists, registered nurses, and other health professionals determined by the office to be needed in medically underserved areas.

(f) ''Office'' means the Office of Statewide Health Planning and Development.

(g) ''Underrepresented groups'' means African-Americans, Native Americans, Hispanic-Americans, or other persons underrepresented in

medicine, dentistry, nursing, or other health professions as determined by the board. After January 1, 1990, the board, upon a finding that the action is necessary to meet the health care needs of medically underserved areas, may add a group comprising the economically disadvantaged to those groups authorized to receive assistance under this article.

SEC. 19. Section 128385 of the Health and Safety Code is amended to read:

128385. (a) There is hereby created the Registered Nurse Education Program within the Health Professions Education Foundation. Persons participating in this program shall be persons who agree in writing prior to graduation to serve in an eligible county health facility, an eligible state-operated health facility, or a health manpower shortage area, as designated by the director of the office. Persons agreeing to serve in eligible county health facilities, eligible state-operated health facilities, or health manpower shortage areas may apply for scholarship or loan repayment. The Registered Nurse Education Program shall be administered in accordance with Article 1 (commencing with Section 128330), except that all funds in the Registered Nurse Education Fund shall be used only for the purpose of promoting the education of registered nurses and related administrative costs. The Health Professions Education Foundation shall make recommendations to the director of the office concerning both of the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility, an eligible state-operated health facility, or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the California Healthcare Workforce Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(b) Applicants may be persons licensed as registered nurses or graduates of associate degree nursing programs prior to entering a program granting a baccalaureate of science degree in nursing. Priority shall be given to applicants who hold associate degrees in nursing.

(c) Not more than 5 percent of the funds available under the Registered Nurse Education Program shall be available for a pilot project designed to test whether it is possible to encourage articulation

from associate degree nursing programs to baccalaureate of science degree nursing programs. Persons who otherwise meet the standards of subdivision (a) shall be eligible for educational loans when they are enrolled in associate degree nursing programs. If these persons complete a baccalaureate of science degree nursing program in California within five years of obtaining an associate degree in nursing and meet the standards of this article, these loans shall be completely forgiven.

(d) As used in this section, ''eligible county health facility'' means a county health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

(e) As used in this section, ''eligible state-operated health facility'' means a state-operated health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

SEC. 20. 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 583

An act to amend Section 1371.4 of, and to add Section 1262.8 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. (a) It is the intent of the Legislature in enacting this act to protect patients with health benefits coverage from being billed in the event of a dispute between a hospital and a health care service plan, where the hospital has not contacted the health care service plan to access a patient's medical record and the health care service plan makes the record available.

(b) It is not the Legislature's intent to change the existing law concerning the duties of a hospital or physician and surgeon to a patient who presents in an emergency department of a licensed hospital.

(c) It is not the Legislature's intent to change existing law concerning the responsibilities that a health care service plan and an emergency health care provider, including a hospital, have in relation to each other, including the duty to reimburse for services provided.

(d) It is not the Legislature's intent to impair the ability of emergency physicians to provide emergency services and prompt care in accordance with the medical needs of their patients.

SEC. 2. Section 1262.8 is added to the Health and Safety Code, to read:

1262.8. (a) A hospital shall contact an enrollee's health care service plan to obtain the enrollee's medical record information prior to admitting the enrollee for poststabilization care as an inpatient, or prior to transferring the enrollee for poststabilization care to a noncontracting hospital, or prior to providing poststabilization care to an enrollee who was admitted to a noncontracting hospital for medically necessary care prior to stabilization of an emergency medical condition, if all of the following apply:

(1) The hospital is able to obtain the name of the enrollee's health care service plan.

(2) The hospital is a noncontracting California hospital with a noncontracting physician and surgeon who wants to do any of the following:

(A) Admit the enrollee as an inpatient in a noncontracting hospital for poststabilization care following the provision of emergency services and care.

(B) Transfer the enrollee to a noncontracting hospital for poststabilization care following the provision of emergency services and care.

(C) Provide poststabilization care to an enrollee who was admitted to a noncontracting hospital for medically necessary care prior to stabilization of an emergency medical condition.

(3) The health care service plan has a physician and surgeon who is regularly assigned to provide emergency services and care in a basic or comprehensive emergency department, who is available within 30 minutes of the time the hospital contacts the health care service plan by telephone, and who has all of the following:

(A) Has immediate access to the enrollee's medical records.

(B) Has the ability to promptly discuss the enrollee's records with the noncontracting physician and surgeon or appropriate hospital representative, if the noncontracting physician and surgeon or appropriate hospital representative requests that discussion.

(C) Has the ability to transmit the appropriate portion of the records requested by the noncontracting physician and surgeon or appropriate hospital representative to the hospital via facsimile transmission or

electronic mail in a manner that complies with all legal requirements to protect the enrollee's privacy.

(4) The health care service plan can provide authorization for poststabilization care and provide information concerning cost sharing that the noncontracting hospital may charge the enrollee under the enrollee's coverage.

(b) A hospital required to contact an enrollee's health care service plan pursuant to this section shall do so as soon as reasonably possible, but not until the enrollee's medical condition is stabilized, as determined by the noncontracting physician and surgeon at the time the emergency services and care are rendered.

(c) If a hospital required to contact an enrollee's health care service plan pursuant to this section fails to do so, the hospital shall not bill the enrollee for poststabilization care.

(d) Subdivisions (a), (b), and (c) do not apply to a physician and surgeon providing medical services at the hospital.

(e) For purposes of this section, a representative of the hospital or noncontracting physician and surgeon is not required to make more than one telephone call to the number provided in advance by the health care service plan. The representative of the hospital who makes the telephone call may be, but is not required to be, a physician and surgeon.

(f) For purposes of this section, ''poststabilization care'' means necessary medical care following stabilization of an emergency medical condition.

SEC. 3. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain

authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Managed Health Care shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Managed Health Care shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction of this section.

(j) (1) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 and that is contacted by a hospital pursuant to Section 1262.8 shall, within 30 minutes of the time the hospital makes the initial telephone call requesting information, do all of the following:

(A) Discuss the enrollee's medical record with the noncontracting physician and surgeon or an appropriate representative of the hospital.

(B) Transmit any appropriate portion of the enrollee's medical record requested by the appropriate hospital representative or the noncontracting physician and surgeon to the hospital by facsimile transmission or electronic mail, whichever method is requested by the appropriate hospital representative or the noncontracting physician and surgeon. The health care service plan shall transmit the record in a manner that complies with all legal requirements to protect the enrollee's privacy.

(C) Either authorize poststabilization care or inform the hospital that it will arrange for the prompt transfer of the enrollee to another hospital.

(2) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 and that is contacted by a hospital pursuant to Section 1262.8 shall reimburse the hospital for poststabilization care rendered to the enrollee if any of the following occur:

(A) The health care service plan authorizes the hospital to provide poststabilization care.

(B) The health care service plan does not respond to the hospital's initial contact or does not make a decision regarding whether to authorize poststabilization care or to promptly transfer the enrollee within the timeframe set forth in paragraph (1).

(C) There is an unreasonable delay in the transfer of the enrollee, and the noncontracting physician and surgeon determines that the enrollee requires poststabilization care.

(3) Paragraphs (1) and (2) do not apply to a physician and surgeon who provides medical services at the hospital.

(4) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 shall not require a hospital representative or a noncontracting physician and surgeon to make more than one telephone call pursuant to Section 1262.8 to the number provided in advance by the health care service plan. The representative of the hospital that makes the telephone call may be, but is not required to be, a physician and surgeon.

(5) An enrollee who is billed by a hospital in violation of Section 1262.8 may report receipt of the bill to the health care service plan and

the department. The department shall forward that report to the State Department of Health Services.

(6) For purposes of this section, ''poststabilization care'' means medically necessary care following stabilization of an emergency medical condition.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 584

An act to amend Sections 56836.16 and 56836.17 of, and to add Section 56836.175 to, the Education Code, relating to special education.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 56836.16 of the Education Code is amended to read:

56836.16. (a) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall apportion to each school district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, plus the costs of special education instruction, designated instruction and services, or both, provided directly by a school district with less than 3,000 average daily attendance, to pupils who reside in a skilled nursing facility, and (2) the state income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, may not exceed the cost of master contracts with nonpublic, nonsectarian schools and agencies to provide special education and designated instruction and

services for these pupils, nor may it exceed the cost of providing special education instruction, designated instruction and services to pupils who reside in a skilled nursing facility, as determined by the superintendent.

(b) The cost of master contracts with nonpublic, nonsectarian schools and agencies, or the cost of providing special education instruction, designated instruction and services to pupils who reside in a skilled nursing facility, that a school district or county office of education reports under this section may not include any of the following costs that a school district, county office of education, or special education local plan area may incur:

(1) Administrative or indirect costs for the local educational agency.

(2) Direct support costs for the local educational agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency master contract or individual services agreement for use of services or equipment owned, leased, or contracted, by a school district, special education local plan area, or county office of education for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the school district or county office of education including all of the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services, other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366, and other than those provided directly by a school district pursuant to the individualized education program of a pupil residing in a skilled nursing facility.

(B) School nurse services, other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366, and other than those provided directly by a school district pursuant to the individualized education program of a pupil residing in a skilled nursing facility.

(C) Language, speech, and hearing services, other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366, and other than those provided directly by a school district pursuant to the individualized education program of a pupil residing in a skilled nursing facility.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366, and other than those

provided directly by a school district pursuant to the individualized education program of a pupil residing in a skilled nursing facility.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state, unless placement of the pupil is done pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (k) of Section 56366.1.

(10) Costs for services provided by public school employees, unless those services are provided pursuant to the individualized education program of a pupil residing in a skilled nursing facility.

(c) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 2. Section 56836.17 of the Education Code is amended to read:

56836.17. (a) The superintendent may reimburse each school district and county office of education providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 for assessment and identification costs for pupils who reside in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities who are placed in state-certified nonpublic, nonsectarian schools. The superintendent may also reimburse each school district and county office of education for assessment and identification costs for pupils who reside in a skilled nursing facility and are served directly by a school district with less than 3,000 average daily attendance.

(b) Actual costs under this section shall not include either administrative or indirect costs, or any proration of support costs.

(c) The total amount reimbursed statewide under this section shall not exceed the amount appropriated for these purposes in any fiscal year. If the superintendent determines that this amount is insufficient to reimburse all claims, the superintendent shall prorate the deficiency

among all school districts or county offices of education submitting claims.

SEC. 3. Section 56836.175 is added to the Education Code, to read:

56836.175. For purposes of this article, a "skilled nursing facility" shall have the same meaning as specified in Section 1250 of the Health and Safety Code, and shall be under contract with the State Department of Health Services to provide pediatric subacute care.

CHAPTER 585

An act to add Section 16004.5 to the Probate Code, relating to trusts.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 16004.5 is added to the Probate Code, to read:

16004.5. (a) A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument.

(b) This section may not be construed as affecting the trustee's right to:

(1) Maintain a reserve for reasonably anticipated expenses, including, but not limited to, taxes, debts, trustee and accounting fees, and costs and expenses of administration.

(2) Seek a voluntary release or discharge of a trustee's liability from the beneficiary.

(3) Require indemnification against a claim by a person or entity, other than a beneficiary referred to in subdivision (a), which may reasonably arise as a result of the distribution.

(4) Withhold any portion of an otherwise required distribution that is reasonably in dispute.

(5) Seek court or beneficiary approval of an accounting of trust activities.

CHAPTER 586

An act to amend Sections 2475.3, 2481, 2483, 2878.5, 3732, 3750, 3750.6, 3760, 3761, 3775, 3775.2, 3777, and 4521 of, to add Sections

3775.6 and 3778 to, and to repeal Sections 3714, 3721, 3733, 3736.5, 3737, and 3751.1 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 2475.3 of the Business and Professions Code is amended to read:

2475.3. (a) The board shall approve podiatric residency programs, as defined in Section 2475.2, in the field of podiatric medicine, for persons who are applicants for or have been issued a certificate to practice podiatric medicine pursuant to this article.

(b) The board may only approve a podiatric residency that it determines meets all of the following requirements:

(1) Reasonably conforms with the Accreditation Council for Graduate Medical Education's Institutional Requirements of the Essentials of Accredited Residencies in Graduate Medical Education: Institutional and Program Requirements.

(2) Is approved by the Council on Podiatric Medical Education.

(3) Complies with the requirements of this state.

SEC. 2. Section 2481 of the Business and Professions Code is amended to read:

2481. Each applicant who commenced professional instruction in podiatric medicine after September 1, 1959, shall show by an official transcript or other official evidence submitted directly to the board by the academic institution that he or she has completed two years of preprofessional postsecondary education, or its equivalent, including the subjects of chemistry, biology or other biological science, and physics or mathematics, before completing the resident course of professional instruction.

SEC. 3. Section 2483 of the Business and Professions Code is amended to read:

2483. (a) Each applicant for a certificate to practice podiatric medicine shall show by an official transcript or other official evidence satisfactory to the board that is submitted directly to the board by the academic institution that he or she has successfully completed a medical curriculum extending over a period of at least four academic years, or 32 months of actual instruction, in a college or school of podiatric medicine approved by the board. The total number of hours of all courses shall consist of a minimum of 4,000 hours.

The board, by regulation, shall adopt standards for determining equivalent training authorized by this section.

(b) The curriculum for all applicants shall provide for adequate instruction related to podiatric medicine in the following:

Alcoholism and other chemical substance detection
Local anesthesia
Anatomy, including embryology, histology, and neuroanatomy
Behavioral science
Biochemistry
Biomechanics-foot and ankle
Child abuse detection
Dermatology
Geriatric medicine
Human sexuality
Infectious diseases
Medical ethics
Neurology
Orthopedic surgery
Pathology, microbiology, and immunology
Pediatrics
Pharmacology, including materia medica and toxicology
Physical and laboratory diagnosis
Physical medicine
Physiology
Podiatric medicine
Podiatric surgery
Preventive medicine, including nutrition
Psychiatric problem detection
Radiology and radiation safety
Spousal or partner abuse detection
Therapeutics
Women's health

SEC. 4. Section 2878.5 of the Business and Professions Code is amended to read:

2878.5. In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the

extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).

SEC. 5. Section 3714 of the Business and Professions Code is repealed.

SEC. 6. Section 3721 of the Business and Professions Code is repealed.

SEC. 7. Section 3732 of the Business and Professions Code is amended to read:

3732. (a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

SEC. 8. Section 3733 of the Business and Professions Code is repealed.

SEC. 9. Section 3736.5 of the Business and Professions Code is repealed.

SEC. 10. Section 3737 of the Business and Professions Code is repealed.

SEC. 11. Section 3750 of the Business and Professions Code is amended to read:

3750. The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(*l*) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the

Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care.

SEC. 12. Section 3750.6 of the Business and Professions Code is amended to read:

3750.6. Upon request, every holder of a pocket license shall produce for inspection the original pocket license issued by the board. A facsimile of the license is not sufficient for that purpose.

Upon request, every applicant issued a work permit shall produce for inspection the original permit issued by the board. A facsimile of the work permit is not sufficient for that purpose.

SEC. 13. Section 3751.1 of the Business and Professions Code is repealed.

SEC. 14. Section 3760 of the Business and Professions Code is amended to read:

3760. (a) Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy. For purposes of this section, engaging in the practice of respiratory care includes, but is not limited to, representations by a person whether through verbal claim, sign, advertisement, letterhead, business card, or other representation that he or she is able to perform any respiratory care service, or performance of any respiratory care service.

(b) No person who is unlicensed or whose respiratory care practitioner license has been revoked or suspended, or whose license is not valid shall engage in the practice of respiratory care during the period of suspension or revocation, even though the person may continue to hold a certificate or registration issued by a private certifying entity.

(c) Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist, a respiratory care technician, or an inhalation therapist, or use the abbreviation or letters ''R.C.P.,'' ''R.P.,'' ''R.T.,'' or ''I.T.,'' or use any modifications or derivatives of those abbreviations or letters without a current and valid license issued under this chapter.

(d) No respiratory care practitioner applicant shall begin practice as a ''respiratory care practitioner applicant'' pursuant to Section 3739 until the applicant meets the applicable requirements of this chapter and obtains a valid work permit.

SEC. 15. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may practice respiratory care or represent himself or herself to be a respiratory care practitioner in this state, without a valid license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a valid license granted under this chapter, except as otherwise provided in this chapter.

SEC. 16. Section 3775 of the Business and Professions Code is amended to read:

3775. The amount of fees provided in connection with licenses or approvals for the practice of respiratory care shall be as follows:

(a) The application fee shall be established by the board at not more than three hundred dollars ($300). The application fee for the applicant under subdivision (c) of Section 3740 shall be established by the board at not more than three hundred fifty dollars ($350).

(b) The fees for any examination or reexamination required by the board shall be the actual cost to the board for developing, purchasing, grading, and administering each examination or reexamination.

(c) The initial license fee for a respiratory care practitioner shall be no more than three hundred dollars ($300).

(d) For any license term beginning on or after January 1, 1999, the renewal fee shall be established at two hundred thirty dollars ($230). The board may increase the renewal fee, by regulation, to an amount not to exceed three hundred thirty dollars ($330). The board shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be established by the board at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 100 percent of the renewal fee in effect at the time or renewal.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall not exceed seventy-five dollars ($75).

(g) The endorsement fee shall not exceed one hundred dollars ($100).

(h) Costs incurred by the board in order to obtain and review documents or information related to the criminal history of, rehabilitation of, disciplinary actions taken by another state agency against, or acts of negligence in the practice of respiratory care by, an applicant or licensee, shall be paid by the applicant or licensee before a license will be issued or a subsequent renewal processed.

(i) Fees paid in any form other than check, money order, or cashier's check shall be subject to an additional processing charge equal to the board's actual processing costs.

(j) Fees incurred by the board to process return mail shall be paid by the applicant or licensee for whom the charges were incurred.

(k) Notwithstanding any other provision of this chapter, the board, in its discretion, may reduce the amount of any fee otherwise prescribed by this section.

SEC. 17. Section 3775.2 of the Business and Professions Code is amended to read:

3775.2. (a) The fee for approval of providers of continuing education shall be established by the board at not more than the following:

(1) The initial application approval fee shall not exceed seven hundred dollars ($700).

(2) The annual renewal fee shall not exceed three hundred fifty dollars ($350).

(3) The fee for rereview or additional approval of any amendments to existing providers shall not exceed three hundred fifty dollars ($350).

(b) The delinquency fee for the annual renewal fee shall be 50 percent of the annual renewal fee.

SEC. 18. Section 3775.6 is added to the Business and Professions Code, to read:

3775.6. (a) A licensee may request that his or her license be placed in a ''retired'' status at any time, provided the license has not been canceled, and any outstanding fines, cost recovery, and monthly probation monitoring costs are paid in full.

(b) An individual with retired status is not subject to any renewal or reporting requirements.

(c) Once an individual is placed on retired status, all privileges to practice respiratory care are rescinded. If an individual practices with a ''retired'' license, the individual will be subject to discipline as prescribed by this chapter for the unlicensed practice of respiratory care.

SEC. 19. Section 3777 of the Business and Professions Code is amended to read:

3777. Where an applicant is issued a license to practice respiratory care, and it is later discovered that all required fees have not been paid,

approved continuing education is not reported or completed, employer information is not reported, or any other requirements as prescribed by this chapter are not met, the license shall not be renewed or reinstated unless all past and current required fees have been paid and all requirements are met.

SEC. 20. Section 3778 is added to the Business and Professions Code, to read:

3778. Notwithstanding any other provision of law, the board may contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts, and may release personal information, including the birth date, telephone number, and social security number of any applicant or licensee for this purpose. The contractual agreement shall provide that the collection service shall not inappropriately use or release personal information, and shall provide safeguards to ensure that the information is protected from inappropriate disclosure. The contractual agreement shall hold the collection service liable for inappropriate use or disclosure of personal information.

SEC. 21. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes but is not limited to any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(*l*) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(m) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 21.5. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an

extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(*l*) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(o) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

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

SEC. 23. Section 21.5 of this bill incorporates amendments to Section 4521 of the Business and Professions Code proposed by both this bill and SB 358. 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 4521 of the Business and Professions Code, and (3) this

bill is enacted after SB 358, in which case Section 21 of this bill shall not become operative.

CHAPTER 587

An act to amend Sections 17073.15, 17073.20, 17074.10, 17077.40, 17077.42, 17077.45, 17078.52, 17078.53, 17078.54, 17078.56, 17078.57, 17078.58, 17078.62, and 17078.64 of, to add Section 17078.66 to, and to repeal Section 17078.50 of, the Education Code, and to amend Section 65352.2 of the Government Code, relating to education facilities.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 17073.15 of the Education Code is amended to read:

17073.15. A school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. A school district is eligible to receive an additional apportionment for the modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the previous apportionment.

SEC. 2. Section 17073.20 of the Education Code is amended to read:

17073.20. Funding may be approved for the modernization of any permanent school building that is more than 25 years old, or any portable classroom that is more than 20 years old, as described in Section 17071.30.

SEC. 3. Section 17074.10 of the Education Code is amended to read:

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in school buildings that satisfy the requirements of Section 17073.15:

(1) Two thousand two hundred forty-six dollars ($2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars ($2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars ($3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars ($2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(f) For a portable classroom that is eligible for a second modernization, the board shall require the school district to use the modernization funds to replace the portable classroom and to certify that the existing eligible portable classroom will be removed from any classroom use, unless the school district is able to document that modernizing the portable classroom is a better use of public resources. The capacity and eligibility of the school district shall not be adjusted for replacing a portable classroom pursuant to this subdivision and Section 17073.15.

SEC. 4. Section 17077.40 of the Education Code is amended to read:

17077.40. (a) With funds made available for the purposes of this article, the board may provide a grant to fund joint-use projects to construct facilities on kindergarten to grade 12, inclusive, schoolsites.

(b) A school district may apply to the board for funding under this article for a project that meets any of the following criteria:

(1) The joint-use project is part of an application for new construction funding under this chapter, and will increase the size or extra cost associated with the joint use of the proposed multipurpose room, gymnasium, child care facility, library, or teacher education facility beyond that necessary for school use.

(2) The joint-use project proposes to either reconfigure existing school buildings or construct new school buildings, or both, to provide for a multipurpose room, a gymnasium, a library, a child care facility, or a teacher education facility and the project will be located at a school that

does not have the type of facility for which funds are requested or the existing facility is inadequate.

(3) The joint-use project proposes to either reconfigure existing school buildings or construct new school buildings, or both, to provide for facilities to improve pupil academic achievement, and the plans for the facility were accepted for review and approval by the department prior to January 1, 2004.

SEC. 5. Section 17077.42 of the Education Code is amended to read:

17077.42. In order to be approved for a grant under this article, the applicant district shall demonstrate that it has complied with all of the following:

(a) The school district has entered into a joint-use agreement with a governmental agency, public community college, public college or public university, or a nonprofit organization approved by the board.

(b) The joint-use agreement specifies the method of sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of the pupils will be ensured.

(c) The joint-use agreement specifies the amount of the contribution to be made by the school district and the joint-use partner toward the 50 percent local share of eligible project costs. The contribution made by a joint-use partner shall be no less than 25 percent of eligible project costs, unless the school district has passed a local bond which specifies that such funds are to be used for the joint-use project, in which case the school district may opt to provide up to the full 50 percent local share of eligible costs.

(d) The school district demonstrates that the facility will be used to the maximum extent possible for both school and community purposes, or both school and higher education purposes, as applicable.

(e) (1) The project application qualifies for funding under paragraph (1) of subdivision (b) of Section 17077.40 and the school district has received all approvals necessary for apportionment under this chapter.

(2) The project qualifies for funding under paragraph (2) or (3) of subdivision (b) of Section 17077.40 and the school district has completed preliminary plans for the project and has received State Department of Education approval of the plans.

SEC. 6. Section 17077.45 of the Education Code is amended to read:

17077.45. (a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) of subdivision (b) of Section 17077.40, the supplemental grant shall

be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (2) or (3) of subdivision (b) of Section 17077.40, the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

(c) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purpose of this article. The board shall not release funds to a qualifying applicant until the project plans have received all approval required pursuant to this chapter, including, but not limited to, the approval of the Division of the State Architect. If the project does not receive all necessary plan approvals within one year of the date of the apportionment, the board shall rescind the apportionment.

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall first fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

SEC. 7. Section 17078.50 of the Education Code is repealed.

SEC. 8. Section 17078.52 of the Education Code is amended to read:

17078.52. (a) There is hereby established the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils.

(b) The 2002 Charter School Facilities Account is hereby established within the 2002 State School Facilities Fund established pursuant to subdivision (b) of Section 17070.40. The proceeds of bonds as set forth in subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620 shall be deposited into the 2002 Charter School Facilities Account for the purposes of this article. Notwithstanding Section 13340

of the Government Code, funds deposited into the account are hereby continuously appropriated for the purposes of this article.

(c) The 2004 Charter School Facilities Account is hereby established within the 2004 State School Facilities Fund established pursuant to subdivision (c) of Section 17070.40. The proceeds of bonds as set forth in subparagraph (A) of paragraph (1) of subdivision (a) of Section 100820, if approved by the voters, shall be deposited into the 2004 Charter School Facilities Account for the purposes of this article. Notwithstanding Section 13340 of the Government Code, funds deposited into the account are hereby continuously appropriated for the purposes of this article.

(d) As used in this article, the following terms have the following meanings:

(1) ''Authority'' means the California School Finance Authority established pursuant to Section 17172.

(2) ''Account'' means the 2002 Charter School Facilities Account established within the 2002 State School Facilities Fund pursuant to subdivision (b) or the 2004 Charter School Facilities Account established within the 2004 State School Facilities Fund pursuant to subdivision (c).

(3) ''Preliminary apportionment'' means an apportionment made for eligible applicants under this article in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter. The process for making preliminary apportionments under this article shall be substantially identical to the process established for critically overcrowded schools pursuant to Sections 17078.22 to 17078.30, inclusive.

(4) ''Financially sound'' means a charter school that has demonstrated, over a period of time determined by the authority, but not less than 24 months immediately preceding the submission of the application, that it has operated as a financially capable concern in California, as measured by criteria established by the authority. A charter school that cannot demonstrate that it has been a financially capable concern for at least 24 months immediately preceding the submission of the application, due solely to not having operated as a charter school for at least 24 months, may meet this 24-month requirement if the charter school is managed by staff who have at least 24 months of documented experience, as measured by criteria established by the authority and the charter school has an educational plan, financial resources, facilities expertise, management expertise, and has been a financially capable concern for at least 24 months, as established by the authority.

(e) The State Allocation Board shall, from time to time, transfer funds within the account to the California School Finance Authority Fund for

the purposes of this article pursuant to the request of the authority as set forth in this article.

SEC. 9. Section 17078.53 of the Education Code is amended to read:

17078.53. (a) The initial preliminary applications for projects to be funded pursuant to this article shall be submitted to the board by March 31, 2003.

(b) Thereafter, the board may establish subsequent application periods as needed.

(c) Preliminary applications may be submitted by eligible applicants as set forth in this article by either of the following:

(1) A school district on behalf of a charter school that is physically located within the geographical jurisdiction of the school district.

(2) A charter school on its own behalf if the charter school has notified both the superintendent and the governing board of the school district in which it is physically located of its intent to do so in writing at least 30 days prior to submission of the preliminary application.

(d) A preliminary application must demonstrate either of the following:

(1) That a charter petition for the school for which the application is submitted has been granted by the appropriate chartering entity prior to the application deadline determined by the board.

(2) That an already existing charter has been amended to include the school for which the application is submitted and approved by the appropriate chartering entity prior to the deadline determined by the board.

(e) The board, after consideration of the recommendations of the authority regarding whether a charter school is financially sound, shall approve the preliminary application and shall make the preliminary apportionment for funding pursuant to this article.

(f) The board shall establish a process to ensure that pupil attendance in a charter school that is physically located within the geographical jurisdiction of a school district is counted as per-pupil eligibility for that school district and to ensure that the same per-pupil attendance is not so counted for any other school district or other applicant under this chapter.

(g) The board shall establish a process to be used for release of funds for approved projects pursuant to this article. Notwithstanding Section 17072.30, the board may provide for the release of planning and site acquisition funds prior to the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281.

SEC. 10. Section 17078.54 of the Education Code is amended to read:

17078.54. (a) An eligible project under this article shall include funding, as permitted by this chapter, for new construction of a school facility for charter school pupils, as set forth in this article. A new construction project may include, but is not limited to, the cost of purchasing and retrofitting an existing building, but may not exceed the amounts set forth in subdivision (b).

(b) The maximum amount of the funding pursuant to this article shall be determined by calculating the charter school's per-pupil grant amount plus other allowable costs as set forth in this chapter. Funding shall be provided by the authority for new facility construction as set forth in Section 17078.58.

(c) To be funded under this article, a project shall comply with all of the following:

(1) (A) It shall meet all the requirements regarding public school construction, plan approvals, toxic substance review, site selection, and site approval, as would any noncharter school project of a school district under this chapter, including, but not limited to, regulations adopted by the State Architect pursuant to Section 17280.5 relating to the retrofitting of existing buildings, as applicable.

(B) Notwithstanding any provision of law to the contrary, including, but not limited to subparagraph (A), the board, after consulting with the relevant regulatory agencies, shall, to the extent feasible, adopt regulations establishing a process for projects to be subject to a streamlined method for obtaining regulatory approvals for all requirements described in subparagraph (A), except for the requirements of the Field Act as defined in Section 17281 which shall be complied with in the same manner as any other project under this chapter.

(2) It shall fund only new construction to be physically located within the geographical jurisdiction of a school district that has demonstrated construction grant eligibility based on current enrollment data as determined pursuant to Section 17072.10, and subdivision (e) of Section 17078.53, for at least the number of pupils set forth in the per-pupil grant request contained in the application.

(d) Facilities funded pursuant to this article shall have a 50 percent local share matching obligation that may be paid by the applicant through lease payments in lieu of the matching share, or as otherwise set forth in this article, including, but not limited to, Section 17078.58.

(e) The authority may charge its administrative costs against the respective 2002 or 2004 Charter School Facilities Account, which shall be subject to the approval of the Department of Finance and which may not exceed 2.5 percent of the account.

SEC. 11. Section 17078.56 of the Education Code is amended to read:

17078.56. (a) The board, in consultation with the authority, shall approve projects pursuant to this article as otherwise set forth in this chapter, and shall make preliminary apportionments only to financially sound applicants in accordance with all of the following criteria:

(1) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various geographical regions of the state.

(2) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of urban, rural, and suburban regions of the state.

(3) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of large, medium, and small charter schools throughout the state.

(4) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various grade levels of pupils served by charter school applicants throughout the state.

(b) While ensuring that the requirements of subdivision (a) are met when considering all approved projects under this article as a whole, the board shall, within each factor of the criteria set forth in subdivision (a), give a preference to charter schools in overcrowded school districts, charter schools in low-income areas, and charter schools operated by not-for-profit entities.

(c) Notwithstanding any other provision of law, the board, in conjunction with the California School Finance Authority, shall maximize the number of projects that may be approved under this article by adopting total per project funding caps. The board shall adopt other funding limits including, but not limited to, limits on the amount of acreage for each project and the amounts of construction funding for each project funded under this article. The adoption of construction funding limits shall include, but not be limited to, savings due to retrofitting existing buildings, joint-use projects, or other factors.

SEC. 12. Section 17078.57 of the Education Code is amended to read:

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining any lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus any lump-sum payments, over the entire payment period as set forth in Section 17078.58.

(D) The payment schedule for lease payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at the rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.

(2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.

(3) (A) Security provisions, including, but not limited to, the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

(B) The authority shall adopt a mechanism whereby a person or entity who provides a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.

(4) The method for integrating funding pursuant to this article with the authority's general procedures pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.

(b) The authority may adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations. The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code.

SEC. 13. Section 17078.58 of the Education Code is amended to read:

17078.58. (a) Funding granted pursuant to this article may not exceed 100 percent of the total allowable project costs as determined by calculating double the per-pupil grant eligibility as set forth in Section 17072.10, and subdivision (e) of Section 17078.53, plus 100 percent of all other allowable construction project costs, as appropriate to the project, that would otherwise be available to school district projects as set forth in this chapter.

(b) The local share equivalent shall be collected in the form of lease payments or otherwise as set forth in this article.

(c) Lease payments in lieu of local share payments, and any other local share payments made pursuant to this article, shall be made to the State Allocation Board for deposit into the respective 2002 or 2004 Charter School Facilities Account. Funds deposited into the account pursuant to this section may be used by the board only for a purpose related to charter school facilities pursuant to this article.

(d) When a preliminary apportionment under this article is converted to a final apportionment, any funds not needed for the final apportionment shall remain in the 2002 or 2004 Charter School Facilities Account for use by the board for any purpose related to charter school facilities pursuant to this article.

SEC. 14. Section 17078.62 of the Education Code is amended to read:

17078.62. (a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), may not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession of the facility and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3),

it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the school district shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the respective 2002 or 2004 Charter School Facilities Account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied.

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

SEC. 15. Section 17078.64 of the Education Code is amended to read:

17078.64. (a) In lieu of applying for funding under this article, a school district may elect to include facilities for a charter school that would be physically located within its geographical jurisdiction within its application for funding pursuant to the general provisions of this chapter, other than this article. However, the project would be outside the scope of this article, would not be subject to its provisions, and shall comply with this chapter in the same manner as any noncharter project. Any per-pupil eligibility that is used for that project shall not, also, support any project under this article.

(b) Except for those provisions in which the authority is expressly required or authorized to adopt regulations pursuant to this article, the board in consultation with the authority shall adopt regulations to implement this article. The board may adopt, amend, or repeal rules and regulations pursuant to this article as emergency regulations. Until July

1, 2004, the adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code.

(c) This article is not applicable to projects funded with the proceeds of state general obligation bonds approved by the voters prior to January 1, 2002.

SEC. 16. Section 17078.66 is added to the Education Code, to read:

17078.66. The State Allocation Board and the California School Finance Authority shall jointly report to the Legislature by July 1, 2005, regarding all of the following:

(a) The implementation of this article, including, but not limited to, a description of the projects funded pursuant to this article from the Kindergarten-University Public Education Facilities Bond Act of 2004.

(b) A description of the process whereby the board provides funding for charter school facilities under provisions of this chapter other than this article.

(c) Recommendations, if any, regarding statutory changes needed to facilitate and streamline the process described in subdivision (b).

SEC. 17. Section 65352.2 of the Government Code is amended to read:

65352.2. (a) It is the intent of the Legislature in enacting this section to foster improved communication and coordination between cities, counties, and school districts related to planning for school siting.

(b) Following notification by a local planning agency pursuant to paragraph (2) of subdivision (a) of Section 65352, the governing board of any elementary, high school, or unified school district, in addition to any comments submitted, may request a meeting with the planning agency to discuss possible methods of coordinating planning, design, and construction of new school facilities and schoolsites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county in accordance with subdivision (d). If a meeting is requested, the planning agency shall meet with the school district within 15 days following notification.

(c) At least 45 days prior to completion of a school facility needs analysis pursuant to Section 65995.6, a master plan pursuant to Sections 16011 and 16322 of the Education Code, or other long-range plan, that relates to the potential expansion of existing schoolsites or the necessity to acquire additional schoolsites, the governing board of any school district shall notify and provide copies of any relevant and available information, master plan, or other long-range plan, including, if available, any proposed school facility needs analysis, that relates to the potential expansion of existing schoolsites or the necessity to acquire additional schoolsites, to the planning commission or agency of the city

or county with land use jurisdiction within the school district. Following notification, or at any other time, the affected city or county may request a meeting in accordance with subdivision (d). If a meeting is requested, the school district shall meet with the city or county within 15 days following notification. After providing the information specified in this section within the 45-day time period specified in this subdivision, the governing board of the affected school district may complete the affected school facility needs analysis, master plan, or other long-range plan without further delay.

(d) At any meeting requested pursuant to subdivision (b) or (c) the parties may review and consider, but are not limited to, the following issues:

(1) Methods of coordinating planning, design, and construction of new school facilities and schoolsites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county.

(2) Options for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations.

(3) Methods of maximizing the safety of persons traveling to and from schoolsites.

(4) Opportunities to coordinate the potential siting of new schools in coordination with existing or proposed community revitalization efforts by the city or county.

(5) Opportunities for financial assistance which the local government may make available to assist the school district with site acquisition, planning, or preparation costs.

(6) Review all possible methods of coordinating planning, design, and construction of new school facilities and schoolsites or major additions to existing school facilities and recreation and park facilities and programs in the community.

CHAPTER 588

An act to add Section 23399.6 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 23399.6 is added to the Business and Professions Code, to read:

23399.6. (a) Any licensee under a winegrower's license may apply to the department for a wine sales event permit. The wine sales event permit shall authorize the sale of bottled wine produced by the winegrower at festivals, state, county, district, or citrus fruit fairs, civic or cultural celebrations, or similar events approved by the department. The sale of the wine shall not be the primary purpose of the event, and the sale shall be for consumption off the premises where sold. The permit shall be valid for a maximum of five consecutive days during the event period. The event shall be sponsored by an organization that is exempt from taxation under Section 23701a of the Revenue and Taxation Code, including state designated fairs as specified in Section 19418 of the Revenue and Taxation Code, or exempt from taxation under Section 23701b, 23701d, 23701e, 23701k, 23701*l*, 23701r, or 23701w of the Revenue and Taxation Code.

(b) A wine sales event permit may not be used more than two times a month at a particular location.

(c) Consent for sales at each event shall be first obtained by an annual authorization issued by the department. The applicant for the wine sales permit is required to notify the city, county, or city and county where the event is being held at least five days prior to the event. At all events, a copy of the wine sales permit shall be maintained. The licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to that license, and any violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(d) (1) A licensee may not sell more than 5,000 gallons of wine annually pursuant to wine sales event permits issued under this section to that licensee.

(2) A licensee holding a wine sales event permit may not sell more than 1,250 gallons of wine per event.

(3) A licensee that is eligible to receive a certified farmers' market sales permit under Section 23399.4 and a wine sales event permit may not, under both permits collectively, sell more than a total of 5,000 gallons of wine annually.

(4) The licensee shall annually report to the department the total gallons of wine sold by that licensee under permits issued under this section to that licensee. The report may be included within the annual report of production submitted by the licensee to the department, or may

be made in another manner as prescribed by the department in regulation.

(e) The sponsoring tax-exempt organization may charge a fee of the licensee for the licensee's use of display booth space. The fee, if paid, shall be comparable with, or less than, fees, or goods or services of equivalent value, paid by other vendors at the event for a similar booth size and location.

(f) The sponsoring tax-exempt organization shall allow the participation of more than one winegrower under a wine sales event permit at an event if public attendance at the event is expected to reach or exceed 1,000 attendees. The prior year's stated attendance for the event shall be used to determine the expected attendance.

(g) (1) The fee for the authorization to utilize a wine sales permit shall be fifty dollars ($50) per year, and the authorization may be renewable annually at the time of the licensee's license. The wine sales permit authorization shall be transferable as part of the license.

(2) All money collected as fees pursuant to this subdivision shall be deposited in the Alcohol Beverage Control Fund, as described in Section 25761, for allocation, upon appropriation by the Legislature, as provided in subdivision (d) of that section.

(h) The department may adopt any regulations as it determines to be necessary for the administration of this section.

SEC. 2. The department shall, 24 months after the effective date of this act, report to the Legislature on whether the fifty dollar ($50) wine event sales permit fee imposed pursuant to subdivision (g) of Section 23399.6 provides sufficient funds to compensate the department for any additional administrative and enforcement duties it is required to perform pursuant to this act.

CHAPTER 589

An act to amend Section 1632 of the Civil Code, relating to contracts.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 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) Any person engaged in a trade or business who negotiates primarily in the Spanish language, 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

Spanish-language translation of the contract or agreement, 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.

(b) Notwithstanding subdivision (a), 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 Spanish-language translation of the statement to the borrower required by Section 10240 of the Business and Professions Code is in compliance with subdivision (a).

(c) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (a) is executed, a Spanish-language notice shall be provided to the lessee or tenant.

(d) Provision by a supervised financial organization of a Spanish-language 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, prior to the execution of the contract or agreement shall also be deemed in compliance with the requirements of subdivision (a) 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.

(e) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (a) is executed, a Spanish-language notice shall be conspicuously displayed to the effect that the person described in subdivision (a) is required to provide a Spanish-language contract or agreement, or a Spanish-language translation of the disclosures required by law, as the case may be. If a person described in subdivision (a) 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 Spanish language is used.

(f) 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 (a).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (a), including,

but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subdivision (a), are not included in the term "contract" or "agreement."

(g) This section does not apply to any person engaged in a trade or business who negotiates primarily in the Spanish language, as described by subdivision (a), 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 the English and Spanish languages, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(h) Notwithstanding subdivision (a), a Spanish-language 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 Spanish translation. It is permissible, but not required, that this Spanish-language translation be signed.

(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 Spanish-language translation of the contract or the disclosures required by subdivision (d) 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. It is permissible, but not required, that this translation be signed.

(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. Section 1.5 of this bill incorporates amendments to Section 1632 of the Civil Code proposed by both this bill and AB 309. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, but this bill becomes operative first, (2) each bill amends Section 1632 of the Civil Code, and (3) this bill is enacted after AB 309, in which case Section 1632 of the Civil Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 309, at which time Section 1.5 of this bill shall become operative.

CHAPTER 590

An act to repeal and add Sections 1373.65, 1373.95, and 1373.96 of the Health and Safety Code, and to amend Section 10133.56 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 28, 2003. Filed with
Secretary of State September 29, 2003.]

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

SECTION 1. (a) It is the intent of the Legislature to clarify the rights of consumers when a disruption of the provider network of their health care service plan or health insurer occurs. During the past two years, over 2.3 million Californians have been affected by contract terminations that have resulted in the block transfer of large groups of enrollees and insureds from a terminated provider to a new provider.

(b) It is the further intent of the Legislature to provide consumers with expanded rights to ensure a smooth transition to a new provider and to complete a course of treatment with the same provider or to maintain the same provider under certain circumstances.

SEC. 2. Section 1373.65 of the Health and Safety Code is repealed.

SEC. 3. Section 1373.65 is added to the Health and Safety Code, to read:

1373.65. (a) At least 75 days prior to the termination date of its contract with a provider group or a general acute care hospital, the health care service plan shall submit an enrollee block transfer filing to the department that includes the written notice the plan proposes to send to affected enrollees. The plan may not send this notice to enrollees until the department has reviewed and approved its content. If the department does not respond within seven days of the date of its receipt of the filing, the notice shall be deemed approved.

(b) At least 60 days prior to the termination date of a contract between a health care service plan and a provider group or a general acute care hospital, the plan shall send the written notice described in subdivision (a) by United States mail to enrollees who are assigned to the terminated provider group or hospital. A plan that is unable to comply with the timeframe because of exigent circumstances shall apply to the department for a waiver. The plan is excused from complying with this requirement only if its waiver application is granted by the department or the department does not respond within seven days of the date of its receipt of the waiver application. If the terminated provider is a hospital and the plan assigns enrollees to a provider group with exclusive admitting privileges to the hospital, the plan shall send the written notice to each enrollee who is a member of the provider group and who resides within a 15-mile radius of the terminated hospital. If the plan operates as a preferred provider organization or assigns members to a provider group with admitting privileges to hospitals in the same geographic area as the terminated hospital, the plan shall send the written notice to all enrollees who reside within a 15-mile radius of the terminated hospital.

(c) The health care service plan shall send enrollees of a preferred provider organization the written notice required by subdivision (b) only if the terminated provider is a general acute care hospital.

(d) If an individual provider terminates his or her contract or employment with a provider group that contracts with a health care service plan, the plan may require that the provider group send the notice required by subdivision (b).

(e) If, after sending the notice required by subdivision (b), a health care service plan reaches an agreement with a terminated provider to renew or enter into a new contract or to not terminate their contract, the plan shall offer each affected enrollee the option to return to that provider. If an affected enrollee does not exercise this option, the plan shall reassign the enrollee to another provider.

(f) A health care service plan and a provider shall include in all written, printed, or electronic communications sent to an enrollee that concern the contract termination or block transfer, the following statement in not less than eight-point type: ''If you have been receiving care from a health care provider, you may have a right to keep your provider for a designated time period. Please contact your HMO's customer service department, and if you have further questions, you are encouraged to contact the Department of Managed Health Care, which protects HMO consumers, by telephone at its toll-free number, 1-888-HMO-2219, or at a TDD number for the hearing impaired at 1-877-688-9891, or online at www.hmohelp.com.''

(g) For purposes of this section, ''provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 4. Section 1373.95 of the Health and Safety Code is repealed.

SEC. 5. Section 1373.95 is added to the Health and Safety Code, to read:

1373.95. (a) (1) A health care service plan, other than a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall file a written continuity of care policy as a material modification with the department before March 31, 2004.

(2) A health care service plan shall include all of the following in its written continuity of care policy:

(A) A description of the plan's process for the block transfer of enrollees from a terminated provider group or hospital to a new provider group or hospital.

(B) A description of the manner in which the plan facilitates the completion of covered services pursuant to the provisions of Section 1373.96.

(C) A template of the notice the plan proposes to send to enrollees describing its policy and informing enrollees of their right to completion of covered services.

(D) A description of the plan's process to review an enrollee's request for the completion of covered services.

(E) A provision ensuring that reasonable consideration is given to the potential clinical effect on an enrollee's treatment caused by a change of provider.

(3) If approved by the department, the provisions of the written continuity of care policy shall replace all prior continuity of care policies. The plan shall file a revision of the policy with the department if it makes a material change to it.

(b) (1) The provisions of this subdivision apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.

(2) The plan shall file with the department a written policy describing the manner in which it facilitates the continuity of care for a new enrollee who has been receiving services from a nonparticipating mental health provider for an acute, serious, or chronic mental health condition when his or her employer changed health plans. The written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to a participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The policy may provide that the length of the transition period take into account on a case-by-case basis, the severity of the enrollee's condition and the amount of time reasonably necessary to effect a safe transfer. The policy shall ensure that reasonable consideration is given to the potential clinical effect of a change of provider on the enrollee's treatment for the condition. The policy shall describe the plan's process to review an enrollee's request to continue his or her course of treatment with a nonparticipating mental health provider. Nothing in this paragraph shall be construed to require the plan to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. For purposes of the continuing treatment of the transferring enrollee, the plan may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into its standard mental health provider contract.

(3) A plan may require a nonparticipating mental health provider whose services are continued pursuant to the written policy, to agree in writing to the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of

payment. If the plan determines that an enrollee's health care treatment should temporarily continue with his or her existing provider or nonparticipating mental health provider, the plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provisions of services by the existing provider or a nonparticipating mental health provider.

(4) The written policy shall not apply to an enrollee who is offered an out-of-network option or to an enrollee who had the option to continue with his or her previous specialized health care service plan that offers professional mental health services on an employer-sponsored group basis or mental health provider and instead voluntarily chose to change health plans.

(5) This subdivision shall not apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis if it includes out-of-network coverage that allows the enrollee to obtain services from his or her existing mental health provider or nonparticipating mental health provider.

(c) The health care service plan, including a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee.

(d) Nothing in this section shall require a health care service plan or a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The following definitions apply for the purposes of this section:

(1) ''Hospital'' means a general acute care hospital.

(2) ''Nonparticipating mental health provider'' means a psychiatrist, licensed psychologist, licensed marriage and family therapist, or licensed social worker who does not contract with the specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.

(3) ''Provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 6. Section 1373.96 of the Health and Safety Code is repealed.

SEC. 7. Section 1373.96 is added to the Health and Safety Code, to read:

1373.96. (a) A health care service plan shall at the request of an enrollee, provide the completion of covered services as set forth in this section by a terminated provider or by a nonparticipating provider.

(b) (1) The completion of covered services shall be provided by a terminated provider to an enrollee who at the time of the contract's termination, was receiving services from that provider for one of the conditions described in subdivision (c).

(2) The completion of covered services shall be provided by a nonparticipating provider to a newly covered enrollee who, at the time his or her coverage became effective, was receiving services from that provider for one of the conditions described in subdivision (c).

(c) The health care service plan shall provide for the completion of covered services for the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health care service plan in consultation with the enrollee and the terminated provider or nonparticipating provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(6) Performance of a surgery or other procedure that is authorized by the plan as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date or within 180 days of the effective date of coverage for a newly covered enrollee.

(d) (1) The plan may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services beyond the contract termination date.

(2) Unless otherwise agreed by the terminated provider and the plan or by the individual provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the terminated provider. Neither the plan nor the provider group is required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.

(e) (1) The plan may require a nonparticipating provider whose services are continued pursuant to this section for a newly covered enrollee to agree in writing to be subject to the same contractual terms and conditions that are imposed upon currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the nonparticipating provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services.

(2) Unless otherwise agreed upon by the nonparticipating provider and the plan or by the nonparticipating provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider. Neither the plan nor the provider group is required to continue the services of a nonparticipating provider if the provider does not accept the payment rates provided for in this paragraph.

(f) The amount of, and the requirement for payment of, copayments, deductibles, or other cost-sharing components during the period of completion of covered services with a terminated provider or a nonparticipating provider are the same as would be paid by the enrollee

if receiving care from a provider currently contracting with or employed by the plan.

(g) If a plan delegates the responsibility of complying with this section to a provider group, the plan shall ensure that the requirements of this section are met.

(h) This section shall not require a plan to provide for completion of covered services by a provider whose contract with the plan or provider group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.

(i) This section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract. This section shall not apply to a newly covered enrollee covered under an individual subscriber agreement who is undergoing a course of treatment on the effective date of his or her coverage for a condition described in subdivision (c).

(j) The provisions contained in this section are in addition to any other responsibilities of a health care service plan to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude a plan from providing continuity of care beyond the requirements of this section.

(k) The following definitions apply for the purposes of this section:

(1) ''Individual provider'' means a person who is a licentiate, as defined in Section 805 of the Business and Professions Code, or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Nonparticipating provider'' means a provider who is not contracted with a health care service plan.

(3) ''Provider'' shall have the same meaning as set forth in subdivision (i) of Section 1345.

(4) ''Provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 8. Section 10133.56 of the Insurance Code is amended to read:

10133.56. (a) A health insurer that enters into a contract with a professional or institutional provider to provide services at alternative rates of payment pursuant to Section 10133 shall, at the request of an insured, arrange for the completion of covered services by a terminated provider, if the insured is undergoing a course of treatment for any of the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a

limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health insurer in consultation with the insured and the terminated provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(6) Performance of a surgery or other procedure that has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(b) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section, to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer is not required to continue the provider's services beyond the contract termination date.

(c) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that is the same as the rates and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full, and shall not bill the insured for any amount in excess of the

reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (e).

(d) Notice as to how an insured may request completion of covered services pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after March 31, 2004. An insurer shall provide a written copy of this information to its contracting providers and provider groups. An insurer shall also provide a copy to its insureds upon request.

(e) The payment of copayments, deductibles, or other cost-sharing components by the insured during the period of completion of covered services with a terminated provider shall be the same copayments, deductibles, or other cost-sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.

(f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

(g) For the purposes of this section:

(1) ''Provider'' means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Terminated provider'' means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) ''Provider group'' includes a medical group, independent practice association, or any other similar organization.

(h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(j) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

(k) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

SEC. 9. This act shall become operative only if Assembly Bill 1286 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2004.

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 591

An act to repeal and add Sections 1373.65, 1373.95, and 1373.96 of the Health and Safety Code, and to amend Section 10133.56 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. (a) It is the intent of the Legislature to clarify the rights of consumers when a disruption of the provider network of their health care service plan or health insurer occurs. During the past two years, over 2.3 million Californians have been affected by contract terminations that have resulted in the block transfer of large groups of enrollees and insureds from a terminated provider to a new provider.

(b) It is the further intent of the Legislature to provide consumers with expanded rights to ensure a smooth transition to a new provider and to complete a course of treatment with the same provider or to maintain the same provider under certain circumstances.

SEC. 2. Section 1373.65 of the Health and Safety Code is repealed.

SEC. 3. Section 1373.65 is added to the Health and Safety Code, to read:

1373.65. (a) At least 75 days prior to the termination date of its contract with a provider group or a general acute care hospital, the health care service plan shall submit an enrollee block transfer filing to the department that includes the written notice the plan proposes to send to affected enrollees. The plan may not send this notice to enrollees until the department has reviewed and approved its content. If the department

does not respond within seven days of the date of its receipt of the filing, the notice shall be deemed approved.

(b) At least 60 days prior to the termination date of a contract between a health care service plan and a provider group or a general acute care hospital, the plan shall send the written notice described in subdivision (a) by United States mail to enrollees who are assigned to the terminated provider group or hospital. A plan that is unable to comply with the timeframe because of exigent circumstances shall apply to the department for a waiver. The plan is excused from complying with this requirement only if its waiver application is granted by the department or the department does not respond within seven days of the date of its receipt of the waiver application. If the terminated provider is a hospital and the plan assigns enrollees to a provider group with exclusive admitting privileges to the hospital, the plan shall send the written notice to each enrollee who is a member of the provider group and who resides within a 15-mile radius of the terminated hospital. If the plan operates as a preferred provider organization or assigns members to a provider group with admitting privileges to hospitals in the same geographic area as the terminated hospital, the plan shall send the written notice to all enrollees who reside within a 15-mile radius of the terminated hospital.

(c) The health care service plan shall send enrollees of a preferred provider organization the written notice required by subdivision (b) only if the terminated provider is a general acute care hospital.

(d) If an individual provider terminates his or her contract or employment with a provider group that contracts with a health care service plan, the plan may require that the provider group send the notice required by subdivision (b).

(e) If, after sending the notice required by subdivision (b), a health care service plan reaches an agreement with a terminated provider to renew or enter into a new contract or to not terminate their contract, the plan shall offer each affected enrollee the option to return to that provider. If an affected enrollee does not exercise this option, the plan shall reassign the enrollee to another provider.

(f) A health care service plan and a provider shall include in all written, printed, or electronic communications sent to an enrollee that concern the contract termination or block transfer, the following statement in not less than eight-point type: ''If you have been receiving care from a health care provider, you may have a right to keep your provider for a designated time period. Please contact your HMO's customer service department, and if you have further questions, you are encouraged to contact the Department of Managed Health Care, which protects HMO consumers, by telephone at its toll-free number, 1-888-HMO-2219, or at a TDD number for the hearing impaired at 1-877-688-9891, or online at www.hmohelp.com.''

(g) For purposes of this section, ''provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 4. Section 1373.95 of the Health and Safety Code is repealed.

SEC. 5. Section 1373.95 is added to the Health and Safety Code, to read:

1373.95. (a) (1) A health care service plan, other than a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall file a written continuity of care policy as a material modification with the department before March 31, 2004.

(2) A health care service plan shall include all of the following in its written continuity of care policy:

(A) A description of the plan's process for the block transfer of enrollees from a terminated provider group or hospital to a new provider group or hospital.

(B) A description of the manner in which the plan facilitates the completion of covered services pursuant to the provisions of Section 1373.96.

(C) A template of the notice the plan proposes to send to enrollees describing its policy and informing enrollees of their right to completion of covered services.

(D) A description of the plan's process to review an enrollee's request for the completion of covered services.

(E) A provision ensuring that reasonable consideration is given to the potential clinical effect on an enrollee's treatment caused by a change of provider.

(3) If approved by the department, the provisions of the written continuity of care policy shall replace all prior continuity of care policies. The plan shall file a revision of the policy with the department if it makes a material change to it.

(b) (1) The provisions of this subdivision apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.

(2) The plan shall file with the department a written policy describing the manner in which it facilitates the continuity of care for a new enrollee who has been receiving services from a nonparticipating mental health provider for an acute, serious, or chronic mental health condition when his or her employer changed health plans. The written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to a participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The

policy may provide that the length of the transition period take into account on a case-by-case basis, the severity of the enrollee's condition and the amount of time reasonably necessary to effect a safe transfer. The policy shall ensure that reasonable consideration is given to the potential clinical effect of a change of provider on the enrollee's treatment for the condition. The policy shall describe the plan's process to review an enrollee's request to continue his or her course of treatment with a nonparticipating mental health provider. Nothing in this paragraph shall be construed to require the plan to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. For purposes of the continuing treatment of the transferring enrollee, the plan may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into its standard mental health provider contract.

(3) A plan may require a nonparticipating mental health provider whose services are continued pursuant to the written policy, to agree in writing to the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the plan determines that an enrollee's health care treatment should temporarily continue with his or her existing provider or nonparticipating mental health provider, the plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provisions of services by the existing provider or a nonparticipating mental health provider.

(4) The written policy shall not apply to an enrollee who is offered an out-of-network option or to an enrollee who had the option to continue with his or her previous specialized health care service plan that offers professional mental health services on an employer-sponsored group basis or mental health provider and instead voluntarily chose to change health plans.

(5) This subdivision shall not apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis if it includes out-of-network coverage that allows the enrollee to obtain services from his or her existing mental health provider or nonparticipating mental health provider.

(c) The health care service plan, including a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee.

(d) Nothing in this section shall require a health care service plan or a specialized health care service plan that offers professional mental

health services on an employer-sponsored group basis to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The following definitions apply for the purposes of this section:

(1) ''Hospital'' means a general acute care hospital.

(2) ''Nonparticipating mental health provider'' means a psychiatrist, licensed psychologist, licensed marriage and family therapist, or licensed social worker who does not contract with the specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.

(3) ''Provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 6. Section 1373.96 of the Health and Safety Code is repealed.

SEC. 7. Section 1373.96 is added to the Health and Safety Code, to read:

1373.96. (a) A health care service plan shall at the request of an enrollee, provide the completion of covered services as set forth in this section by a terminated provider or by a nonparticipating provider.

(b) (1) The completion of covered services shall be provided by a terminated provider to an enrollee who at the time of the contract's termination, was receiving services from that provider for one of the conditions described in subdivision (c).

(2) The completion of covered services shall be provided by a nonparticipating provider to a newly covered enrollee who, at the time his or her coverage became effective, was receiving services from that provider for one of the conditions described in subdivision (c).

(c) The health care service plan shall provide for the completion of covered services for the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health care service plan in consultation with the enrollee and the terminated provider or nonparticipating provider and consistent with good professional practice. Completion of covered services under this paragraph shall not

exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(6) Performance of a surgery or other procedure that is authorized by the plan as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date or within 180 days of the effective date of coverage for a newly covered enrollee.

(d) (1) The plan may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services beyond the contract termination date.

(2) Unless otherwise agreed by the terminated provider and the plan or by the individual provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the terminated provider. Neither the plan nor the provider group is required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.

(e) (1) The plan may require a nonparticipating provider whose services are continued pursuant to this section for a newly covered enrollee to agree in writing to be subject to the same contractual terms and conditions that are imposed upon currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider, including, but not limited to, credentialing, hospital privileging,

utilization review, peer review, and quality assurance requirements. If the nonparticipating provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services.

(2) Unless otherwise agreed upon by the nonparticipating provider and the plan or by the nonparticipating provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider. Neither the plan nor the provider group is required to continue the services of a nonparticipating provider if the provider does not accept the payment rates provided for in this paragraph.

(f) The amount of, and the requirement for payment of, copayments, deductibles, or other cost sharing components during the period of completion of covered services with a terminated provider or a nonparticipating provider are the same as would be paid by the enrollee if receiving care from a provider currently contracting with or employed by the plan.

(g) If a plan delegates the responsibility of complying with this section to a provider group, the plan shall ensure that the requirements of this section are met.

(h) This section shall not require a plan to provide for completion of covered services by a provider whose contract with the plan or provider group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.

(i) This section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract. This section shall not apply to a newly covered enrollee covered under an individual subscriber agreement who is undergoing a course of treatment on the effective date of his or her coverage for a condition described in subdivision (c).

(j) The provisions contained in this section are in addition to any other responsibilities of a health care service plan to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude a plan from providing continuity of care beyond the requirements of this section.

(k) The following definitions apply for the purposes of this section:

(1) ''Individual provider'' means a person who is a licentiate, as defined in Section 805 of the Business and Professions Code, or a person

licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Nonparticipating provider'' means a provider who is not contracted with a health care service plan.

(3) ''Provider'' shall have the same meaning as set forth in subdivision (i) of Section 1345.

(4) ''Provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 8. Section 10133.56 of the Insurance Code is amended to read:

10133.56. (a) A health insurer that enters into a contract with a professional or institutional provider to provide services at alternative rates of payment pursuant to Section 10133 shall, at the request of an insured, arrange for the completion of covered services by a terminated provider, if the insured is undergoing a course of treatment for any of the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health insurer in consultation with the insured and the terminated provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(6) Performance of a surgery or other procedure that has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(b) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section, to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer is not required to continue the provider's services beyond the contract termination date.

(c) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that is the same as the rates and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full, and shall not bill the insured for any amount in excess of the reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (e).

(d) Notice as to how an insured may request completion of covered services pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after March 31, 2004. An insurer shall provide a written copy of this information to its contracting providers and provider groups. An insurer shall also provide a copy to its insureds upon request.

(e) The payment of copayments, deductibles, or other cost sharing components by the insured during the period of completion of covered services with a terminated provider shall be the same copayments, deductibles, or other cost sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.

(f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

(g) For the purposes of this section:

(1) ''Provider'' means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Terminated provider'' means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer

or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) ''Provider group'' includes a medical group, independent practice association, or any other similar organization.

(h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(j) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

(k) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 10. This act shall become operative only if Senate Bill 244 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2004.

CHAPTER 592

An act to amend Sections 15807, 15808.1, 15812, 15815, 15862, 70303, 70355, 70356, 70357, 70358, 70362, 70366, 70367, 70373, 70373.5, 70374, 70375, 70392, 70402, 71601, 76000, and 76100 of, to add Section 71626.1 to, to add and repeal Section 70404 of, and to repeal Section 70046.2 of, the Government Code, and to amend Section 42007 of the Vehicle Code, relating to court facilities.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 15807 of the Government Code is amended to read:

15807. The acquisition by the board of any property is subject to the approval of the Department of Finance. The board shall contract with the Department of General Services for the maintenance, repair, and equipment of all public buildings constructed, acquired, or operated by the board, when the Department of General Services elects to furnish maintenance and repair, such maintenance and repair to include the items of maintenance, repair, and equipment customarily supplied or afforded to other state buildings by the Department of General Services, except as provided in paragraph (1) of subdivision (e) of Section 70374.

SEC. 2. Section 15808.1 of the Government Code is amended to read:

15808.1. After January 1, 1980, with respect to the construction, purchase, or lease for a period of five years firm term or more, of buildings for the conduct of state business which are located or will be located in a standard metropolitan statistical area (SMSA) with a population of 250,000 or more according to the most recent decennial census, which is served by a public transit operator, the State Public Works Board, the Department of Finance, and the Department of General Services shall give consideration to the location of existing public transit corridors in the area. Construction, purchase, or lease of buildings for a period of five years firm term or more at locations outside of existing public transit corridors may be approved after the board or department, as the case may be, has determined that the purpose of the facility does not require transit access or the transit operator will provide service as needed, to effectively serve the facility. However, the determination that the purpose of the facility does not require transit access shall not be made if the facility employs more than 200 people or directly serves the public. The board or departments may request the assistance of the transit operator in making their determination and shall notify the operator of their decision. This section does not apply to buildings described in paragraph (2) of subdivision (e) of Section 70374.

SEC. 3. Section 15812 of the Government Code is amended to read:

15812. The unused balance of any amount heretofore or hereafter authorized or appropriated by the Legislature for any public building to be acquired or constructed pursuant to this part which the Director of Finance, with the approval of the board, determines is not required for the building for which it was authorized or appropriated may be transferred on order of the Director of Finance to and in augmentation of any authorization or appropriation made for any other building or buildings under this part and is hereby authorized or appropriated, as the

case may be, for the acquisition or construction of any other building or buildings authorized under this part.

This section does not apply to amounts authorized or appropriated for acquisition or construction of buildings authorized by Chapter 1072 of the Statutes of 1957 or buildings subject to subdivision (f) of Section 70379.

SEC. 4. Section 15815 of the Government Code is amended to read:

15815. (a) The plans and specifications for any public building constructed pursuant to this part shall be prepared by the Department of General Services, and the board shall reimburse the department for the costs of its services from the funds available for that purpose. Any public building constructed under this part shall be constructed in accordance with the State Contract Act.

(b) Subdivision (a) does not apply to any public building constructed by, or on behalf of, the board for lease-purchase by the board to, or in connection with, a contract between the board and any of the following entities:

(1) The Regents of the University of California, if the public building is constructed under Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) The Trustees of the California State University, if the public building is constructed under Chapter 2.5 (commencing with Section 10700) of Part 2 of Division 2 of the Public Contract Code.

(3) A community college district, if the building is constructed under Article 47 (commencing with Section 20650) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

(c) Subdivision (a) does not apply to any public building constructed with the Administrative Office of the Courts serving as the implementing agency under subdivision (b) of Section 70374.

SEC. 5. Section 15862 of the Government Code is amended to read:

15862. (a) Except as specified in subdivision (b), all real property or interest in real property acquired by the state or the Judicial Council pursuant to the Trial Court Facilities Act of 2002 (Chapter 5.7 (commencing with Section 70301) of Title 8), or pursuant to Sections 69202 to 69206, inclusive, shall be under the jurisdiction of the Judicial Council immediately upon transfer of the title to the state.

(b) When real property is acquired by the state pursuant to this part, jurisdiction over the property shall remain in the Department of General Services until the property is needed for the purpose for which it was acquired. The Director of General Services may transfer jurisdiction of the property to the agency for whose use it was acquired before it is needed for the purpose for which acquired if in his opinion the transfer is in the best interests of the state. The department may lease all or any portion of the property which is not presently needed on terms and

conditions as the director may fix and may maintain, improve, and care for the property in order to secure rent therefrom. The department may remove or demolish buildings or other structures on the property when it is desirable to do so. It may sell or dispose of the improvements or any materials available upon the demolishing of any building or structure on the property.

SEC. 6. Section 70046.2 of the Government Code is repealed.

SEC. 7. Section 70303 of the Government Code is amended to read:

70303. (a) The Court Facilities Dispute Resolution Committee is hereby created to hear and determine disputes between a county and the Judicial Council as specified by this chapter.

(b) The committee shall consist of the following members:

(1) One person selected by the California State Association of Counties.

(2) One person selected by the Judicial Council.

(3) One person selected by the Director of Finance.

(c) The committee shall hear and make recommendations to the Director of Finance for determinations in disputes involving the following matters:

(1) Buildings rejected for transfer of responsibility because of deficiencies as provided in Section 70328.

(2) Failure to reach agreement on transfer of responsibility for a building as provided in Section 70333.

(3) Disputes regarding the appropriateness of expenditures from a local courthouse construction fund as provided in Section 70403.

(4) County appeal of a county facilities payment amount as provided in Section 70366.

(5) Administrative Office of the Courts appeal of a county facilities payment amount as provided in Section 70367.

(d) Upon receipt of the recommendation from the committee, the Director of Finance shall make the final determination of the issue in dispute.

(e) The expenses of members of the committee shall be paid for by the agency or organization selecting the member.

(f) The Judicial Council, the California State Association of Counties, and the Department of Finance shall jointly provide for staff assistance to the committee.

(g) Regulations and rules adopted by the committee shall be exempt from review and approval or other processing by the Office of Administrative Law required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

SEC. 8. Section 70355 of the Government Code is amended to read:

70355. (a) Except for the value computed under Section 70359, all values listed in this article shall be adjusted from the fiscal year of the

expenditure to the month of the effective date of transfer for inflation using, as the inflation index, the average of the following three indices from the Bureau of Labor Statistics Producer Price Index, all rebased to equal 100 as of January 1996:

(1) Building cleaning and maintenance services (Series Id PCU 7349).

(2) Operators and lessors of nonresidential buildings (Series Id PCU 6512).

(3) Maintenance and repair constructions (Series Id PCU BMRP).

(b) For purposes of this section, ''rebasing'' means dividing all the values of the price index, by the value of the price index for the period to which the values are to be rebased, and multiplying the results by 100.

SEC. 9. Section 70356 of the Government Code is amended to read:

70356. The following items shall be included in the county facilities payment based on a five-year average of expenditures made by the county for facility operation and maintenance. This amount shall be computed by multiplying the value for each of the five fiscal years from 1995–96 to 1999–2000, inclusive, by the change in the inflation index specified in Section 70355 from January of that fiscal year to the month of the date of transfer of responsibility for the court facilities from the county to the state, inclusive, and then averaging the five adjusted yearly values:

(a) Maintenance and repair, including, but not limited to, maintenance and repair of the building and its components, utility systems, security equipment, and interior and exterior lighting.

(b) Purchase, installation, modernization, and maintenance of major building systems not of an ongoing nature, including, but not limited to, plumbing, HVAC (heating, ventilation, and air-conditioning), electrical, and vertical transportation.

(c) A special repair.

(d) Landscaping and grounds maintenance services for court facilities.

(e) Maintenance of parking spaces or garages dedicated to the court or for jurors.

(f) County facility management and administrative costs directly or indirectly associated with trial court facilities, including, but not limited to, management, supervision, planning, design, department administration, payroll, finance, procurement, and program management.

SEC. 10. Section 70357 of the Government Code is amended to read:

70357. The cost of utilities shall be included in the county facilities payment by calculating the average consumption of utilities for the fiscal years 1995–96 to 1999–2000, inclusive, and multiply the consumption

averages by the 1999–2000 rates, and multiplying the value by the increase in the inflation index specified in Section 70355 from January 2000, to the month of the date of transfer of responsibility for the court facilities from the county to the state, inclusive. As used in this section, utility costs include, but are not limited to, natural gas, heating oil, electricity, water, sewage, and garbage. The consumption rates for 1999–2000 shall be the average of the rates for each month of that fiscal year. Utility costs shall be included without regard to whether payment of the costs was made by the county, the court, or another entity, except that the amount of specific utility costs may not be included in the county facilities payment if all of the following conditions are satisfied:

(a) A lease expressly provides that the utilities are to be paid by the lessor.

(b) There is no payment by the lessee for the utilities, except as part of the lease payment.

(c) The lease payment is included in the county facilities payment.

SEC. 11. Section 70358 of the Government Code is amended to read:

70358. Insurance costs shall be included in the county facilities payment. If the actual expenditures made by the county are used to determine the amount, the expenditures shall be based on the 1999–2000 fiscal year multiplied by the increase in the inflation index specified in Section 70355 from January 2000, to the month of the date of the transfer of responsibility for the court facilities from the county to the state, inclusive.

The amount of insurance may not include the cost of any insurance required by any agreement involving bonded indebtedness on the facility to the extent that the cost of insurance is greater than the cost of commercial insurance coverage on the building.

The determination of the insurance costs may consider the costs of commercial insurance coverage for a fair and reasonable level of insurance and the costs of self-insurance. The amount of the insurance costs shall be subject to negotiation between the Judicial Council and the county.

To the extent the responsibility for grounds is transferred, the insurance costs for court facilities shall include, but not be limited to, the cost of liability insurance relating to the grounds.

SEC. 12. Section 70362 of the Government Code is amended to read:

70362. (a) The Department of Finance shall provide the Administrative Office of the Courts with the base inflation index figures specified in Section 70355 for January 1996, January 1997, January 1998, January 1999, and January 2000, to be included in the approved instructions.

(b) During the period from July 2003, to June 2007, inclusive, on a monthly basis, the department shall provide the Administrative Office of the Courts with a forecast of the monthly inflation index figures specified in Section 70355, using a methodology mutually agreed upon by the department, Administrative Office of the Courts, and California State Association of Counties. This forecast may be used to make a preliminary determination of the county facility payment based on the proposed and final month of transfer.

(c) The department shall provide the Administrative Office of the Courts with the final revised inflation index figures specified in Section 70355 when the final data is available from the Bureau of Labor Statistics Producer Price Index. If the final inflation index figures for the month when a facility transferred from the county to the state is different than the figure used to calculate the county facility payment at the time of the transfer, the Administrative Office of the Courts shall recalculate the county facilities payment based on the final inflation index figures.

(d) Notwithstanding subdivision (c) of Section 70353, any change in the final county facilities payment made pursuant to subdivision (c) shall be reflected as an adjustment to the schedule of county facilities payments at the beginning of the next fiscal year. In addition, any over or underpayment resulting from the difference between the final calculation made pursuant to subdivision (c) and the county facility payment calculation made at the time of transfer shall be reflected as a one-time adjustment to the amount of the first county facility payment owed at the beginning of the next fiscal year.

SEC. 13. Section 70366 of the Government Code is amended to read:

70366. (a) Within 30 days after the Administrative Office of the Courts has mailed the county the approved county facilities payment, pursuant to subdivision (d) of Section 70363, the county may submit a declaration to the Court Facilities Dispute Resolution Committee, with the mailing of copies to the other parties, that the amount is incorrect for one or more of the following reasons:

(1) Expenditure data is reported incorrectly or calculated incorrectly and causes an approved county facilities payment amount that is higher than the payment should be.

(2) The approved county facilities payment includes amounts that were specifically appropriated, funded, and expended by the county to fund extraordinary one-time expenditures. Extraordinary one-time expenditures do not include periodic major facility repair or maintenance including, but not limited to, reroofing or replacement of a major system component. Extraordinary one-time expenditures do include, but are not limited to, abatement of asbestos and seismic structural upgrades.

(3) The approved county facilities payment includes expenses funded from grants or subventions that would not have been funded without these grants or subventions.

(b) The Administrative Director of the Courts shall mail comments to the Court Facilities Dispute Resolution Committee on the county's declaration within 30 days of the mailing of the county's declaration, with the mailing to the other parties.

(c) Within 90 days of receipt of comments pursuant to subdivision (b), the Court Facilities Dispute Resolution Committee shall review the declarations and comments received, and make its recommendation to the Director of Finance concerning correction of any errors and, if necessary, adjustment of the amount of the county facilities payment. The Court Facilities Dispute Resolution Committee shall mail a copy of its recommendation to all the parties.

(d) The Director of Finance or his or her designee shall review the recommendations of the Court Facilities Dispute Resolution Committee and make his or her determination concerning any correction of errors and, if necessary, adjustment of the amount of the county facilities payment. The director shall mail a copy of his or her determination on all the parties.

SEC. 14. Section 70367 of the Government Code is amended to read:

70367. (a) Within 30 days after the Administrative Director of the Courts has mailed to the county, pursuant to subdivision (d) of Section 70363, the approved county facilities payment, the Administrative Director of the Courts may submit a declaration to the Court Facilities Dispute Resolution Committee, mailing of copies to the other parties, that the amount is incorrect because the county failed to report court facilities expenses paid by the county which reduced the amount of the approved county facilities payment.

(b) The county shall mail its comments to the Court Facilities Dispute Resolution Committee on the administrative director's declaration within 30 days of the mailing of the administrative director's declaration, with mailing to the other parties.

(c) Within 90 days of receipt of comments pursuant to subdivision (b), the Court Facilities Dispute Resolution Committee shall review the declarations and comments received, and makes its recommendation to the Director of Finance concerning correction of any errors and, if necessary, adjustment of the amount of the county facilities payment. The Court Facilities Dispute Resolution Committee shall mail a copy of its recommendation to all the parties.

(d) The Director of Finance or his or her designee shall review the recommendations of the Court Facilities Dispute Resolution Committee and make his or her determination concerning any correction of errors

and, if necessary, adjustment of the amount of the county facilities payment. The director shall serve a copy of his or her determination on all the parties.

SEC. 15. Section 70373 of the Government Code is amended to read:

70373. (a) To provide additional funds for maintaining and expanding the uniform accessibility of the courts and judicial process throughout the state, the following surcharges are added to the total fee for filing the first paper by a party in the following actions:

(1) A surcharge in all unlimited civil, family law, and probate actions, as follows:

(A) Ten dollars ($10) from January 1, 2003, through December 31, 2003.

(B) Fifteen dollars ($15) from January 1, 2004, through December 31, 2007.

(2) A surcharge of twenty-five dollars ($25) in all limited civil actions.

(b) The clerk of the court shall collect the surcharge and transmit it to the county treasury. The county treasurer shall transmit the funds monthly to the State Controller, to be deposited in the State Court Facilities Construction Fund. Notwithstanding any other provision of law, the full amount of the surcharge collected shall be deposited as provided in this section.

SEC. 16. Section 70373.5 of the Government Code is amended to read:

70373.5. (a) Notwithstanding paragraph (2) of subdivision (a) of Section 70373, a surcharge of eighteen dollars ($18) shall be added to the first appearance fee in all limited civil actions in lieu of the twenty-five-dollar ($25) fee provided by that section.

(b) The surcharge provided for in this section and Section 70373 are not subject to the percentage surcharge authorized by Section 68087.

(c) 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. 17. Section 70374 of the Government Code is amended to read:

70374. (a) The Judicial Council shall annually recommend to the Governor and the Legislature the amount proposed to be spent for projects paid for with money in the State Court Facilities Construction Fund. The use of the appropriated money is subject to subdivision (*l*) of Section 70391.

(b) Acquisition and construction of court facilities shall be subject to the State Building Construction Act of 1955 (commencing with Section 15800) and the Property Acquisition Law (commencing with Section

15850), except that, (1) notwithstanding any other provision of law, the Administrative Office of the Courts shall serve as an implementing agency upon approval of the Department of Finance, and (2) the provisions of subdivision (e) shall prevail. Acquisition and construction of facilities are not subject to the provisions of the Public Contract Code, but shall be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the Department of Finance.

(c) Money in the State Court Facilities Construction Fund shall only be used for either of the following:

(1) To acquire, rehabilitate, construct, or finance court facilities, as defined by subdivision (e) of Section 70302.

(2) To rehabilitate one or more existing court facilities in conjunction with the construction, acquisition, or financing of one or more new court facilities.

(d) Twenty-five percent of all money collected for the State Court Facilities Construction Fund from any county shall be designated for implementation of trial court projects in that county. The Judicial Council shall determine the local projects after consulting with the trial court in that county and based on the locally approved trial court facilities master plan for that county.

(e) The following provisions shall prevail over provisions of the State Building Construction Act of 1955 (Part 10.6 (commencing with Section 15800) of Division 3 of Title 2) in regard to buildings subject to this section.

(1) The Administrative Office of the Courts shall be responsible for the operation, including, but not limited to, the maintenance and repair, of all court facilities whose title is held by the state. Notwithstanding Section 15807, the operation of buildings under this section shall be the responsibility of the Judicial Council.

(2) Notwithstanding Section 15808.1, the Judicial Council shall have the responsibility for determining whether a building under this act shall be located within or outside of an existing public transit corridor.

(3) The buildings under this section are subject to Section 15814.12 concerning cogeneration and alternative energy sources at the request of, or with the consent of, the Judicial Council. Any building acquired by the state pursuant to this section on or before July 1, 2007, is not subject to subdivision (b) of Section 15814.12 concerning acquiring of cogeneration or alternative energy equipment if the building when acquired, already had cogeneration or alternative energy equipment. Section 15814.17 only applies to buildings to which the Judicial Council has given its consent under subdivision (a) of Section 15814.12.

SEC. 18. Section 70375 of the Government Code is amended to read:

70375. (a) This article shall take effect on January 1, 2003, and the fund, penalty, and fee assessment established by this article shall become operative on January 1, 2003, except as otherwise provided in this article.

(b) In each county, the amount authorized by Section 70372 shall be reduced by the following:

(1) The amount collected for deposit into the local courthouse construction fund established pursuant to Section 76100.

(2) The amount collected for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401 to the extent it is funded by money from the local courthouse construction fund.

(c) The amount authorized by Section 70373 shall be reduced by the following in the following counties:

(1) In the County of Riverside, the amount collected pursuant to Section 26826.1 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(2) In the County of San Bernardino, the amount collected pursuant to Section 76236 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(3) In the City and County of San Francisco, the amount collected pursuant to Section 76238 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(d) The authority for all of the following shall expire proportionally as of the date of transfer of responsibility for facilities from the county to the Judicial Council, except so long as money is needed to pay for construction provided for in those sections and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council:

(1) An additional penalty for a local courthouse construction fund established pursuant to Section 76100.

(2) A filing fee surcharge in the County of Riverside established pursuant to Section 26826.1.

(3) A filing fee surcharge in the County of San Bernardino established pursuant to Section 76236.

(4) A filing fee surcharge in the City and County of San Francisco established pursuant to Section 76238.

(e) For purposes of subdivision (d), the term ''proportionally'' means that proportion of the fee or surcharge that shall expire upon the transfer of responsibility for a facility that is the same proportion as the square

footage that facility bears to the total square footage of court facilities in that county.

SEC. 19. Section 70392 of the Government Code is amended to read:

70392. Except as otherwise specifically provided by law, the Administrative Office of the Courts shall have the following responsibilities and authority in addition to other responsibilities and authority granted by law or delegated by the Judicial Council:

(a) Notwithstanding any other provision of law and subject to the appropriation of funds, provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts, if the responsibility for the facility has been transferred to the Judicial Council pursuant to this chapter.

(b) Carry out the Judicial Council's policies with regard to trial court facilities, except as otherwise expressly limited by law.

(c) Develop for Judicial Council approval the master plans for trial court facilities in each district.

(d) Construction of court buildings, including, but not limited to, selection of architects and contractors, except as otherwise expressly limited by law.

(e) Delegate its responsibilities and authority to the local trial court for court facilities used by that court.

SEC. 20. Section 70402 of the Government Code is amended to read:

70402. (a) Any amount in either a county's courthouse construction fund established by Section 76100, a fund established by Section 26826.1 in the County of Riverside, a fund established by Section 76236 in the County of San Bernardino, and a fund established by Section 76238 in the City and County of San Francisco, shall be transferred to the State Court Facilities Construction Fund at the later of the following:

(1) The date of the last transfer of responsibility for court facilities from the county to the Judicial Council or June 30, 2007, whichever is earlier.

(2) The date of the final payment of the bonded indebtedness for any court facility that is paid from that fund is retired.

(b) If the responsibility for one or more facilities does not transfer, the county's courthouse construction fund shall retain that portion of the total money in the fund as the square footage of the facilities that do not transfer bears to the total square footage of court facilities in that county.

SEC. 21. Section 70404 is added to the Government Code, to read:

70404. (a) Except as specified in subdivision (b) and notwithstanding any other provision of law, no county may make any expenditure or encumber any future funds from the county courthouse

construction fund established pursuant to Section 76100, without the approval of the Administrative Director of the Courts.

(b) No county may be required to obtain the approval of the Administrative Director of the Courts for any expenditure of county courthouse construction funds for any of the following purposes:

(1) Repayment of existing bonded indebtedness, as defined in subdivision (a) of Section 70301, that has been issued, sold, or delivered, and any refunding of existing bonded indebtedness that has been issued, sold, or delivered, to achieve monetary savings to the county with respect to a building, as defined in subdivision (b) of Section 70301.

(2) Payment of any pending phase or phases of a maintenance project, as specified in subdivision (d) of Section 70326.

(3) Payment for any pending phase or phases of a project involving court facilities, as specified in Section 70331.

(4) Payment for any portion of a county court facility made from county courthouse construction funds with respect to a lease, as permitted under subdivision (d) of Section 70359.

(c) Notwithstanding subdivision (c) of Section 70326, if the Administrative Director of the Courts denies an expenditure from, or the encumbrance of any funds from, the county courthouse construction fund pursuant to subdivision (a), for the purpose of correcting a deficiency or deficiencies in a court facility, as specified in subdivision (b) of Section 70326, that deficiency or deficiencies may not be used as the grounds for rejection of the transfer of responsibility for that court facility to the Judicial Council if both of the following apply:

(1) The county subsequently agrees to make the expenditure from, or to encumber, the local courthouse construction fund, or any other funds, in the same amount and under the same conditions as originally proposed in the request to expend or encumber.

(2) That expenditure or encumbrance would have corrected the deficiency or deficiencies had the Administrative Director of the Courts approved the expenditure or encumbrance at the time of the request for approval.

(d) No county may extend the term of bonded indebtedness for which county courthouse construction funds are encumbered without the approval of the Administrative Director of the Courts.

(e) This section shall become inoperative on July 1, 2007, or on the date that the authority to transfer responsibility for a court facility from a county to the Judicial Council pursuant to Section 70321 has lapsed, whichever is later; and as of the following January 1 is repealed, unless a later enacted statute that is enacted before that January 1, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 71601 of the Government Code is amended to read:

71601. For purposes of this chapter, the following definitions shall apply:

(a) ''Appointment'' means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court's personnel policies, procedures, and plans.

(b) ''Employee organization'' means any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with the trial court.

(c) ''Hiring'' means appointment as defined in subdivision (a).

(d) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) ''Meet and confer in good faith'' means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) ''Personnel rules,'' ''personnel policies, procedures, and plans,'' and ''rules and regulations'' mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) ''Promotion'' means promotion within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) ''Recognized employee organization'' means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) ''Subordinate judicial officer'' means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and judge pro tempore.

(j) ''Transfer'' means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) ''Trial court'' means a superior court or a municipal court.

(*l*) ''Trial court employee'' means a person who is both of the following:

(1) Paid from the trial court's budget, regardless of the funding source. For the purpose of this paragraph, ''trial court's budget'' means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the ''trial court'' includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a ''trial court employee'' if and only if both paragraphs (1) and (2) of subdivision (*l*) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase ''trial court employee'' includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (*l*). The phrase ''trial court employee'' does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

SEC. 23. Section 71626.1 is added to the Government Code, to read:

71626.1. (a) Any trial court receiving cleaning or maintenance services from persons employed directly by the court or county shall continue to receive those services from persons employed directly by a trial court or county in which the trial court is located.

(b) If the trial court replaces the county in providing cleaning or maintenance services, county employees who have been providing those services to the trial court have the right, prior to any other hiring by the trial court of persons to provide those services, to, at their own option,

transfer employment directly from the county to the trial court without a break in service, either when those services are transferred from the county to the trial court, or anytime within two years from the date of that transfer of services if a vacancy exists at the time of the requested transfer. Furthermore, the trial court and an employee organization may by mutual agreement permit county employees providing cleaning or maintenance services in county facilities other than the trial court the option of transferring to the trial court upon such terms as are agreed upon by the trial court and the employee organization if there is a vacancy that no county employee who has been providing cleaning and maintenance services to the trial court opts to fill.

(c) If a county employee who provides cleaning or maintenance services to a trial court transfers employment directly from the county to the trial court without a break in service, upon the date of transfer, that employee shall be considered a trial court employee, as defined in Section 71601 subject to all applicable provisions of this chapter.

(d) The transfer of employment from the county to the trial court under this section shall not be deemed a termination of employment by the county and rehire by the trial court for the purposes of accrued leave benefits, employment seniority, and employment status as a probationary or regular employee. The transfer of employment shall not be the sole cause for a modification of wages or benefits of any kind.

SEC. 24. Section 76000 of the Government Code is amended to read:

76000. (a) In each county there shall be levied an additional penalty of seven dollars ($7) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code.

The county treasurer shall deposit those amounts specified by the board of supervisors by resolution in one or more of the funds established pursuant to this chapter. However, deposits to these funds shall continue through whatever period of time is necessary to repay any borrowings made by the county on or before January 1, 1991, to pay for construction provided for in this chapter.

(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with

respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of two dollars and fifty cents ($2.50) shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund two dollars and fifty cents ($2.50). These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1462.3 or 1463.009 of the Penal Code. The judges of the county shall increase the bail schedule amounts as appropriate to reflect the added penalty provided for by this section. In those cities, districts, or other issuing agencies which elect to accept parking penalties, and otherwise process parking violations pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the added penalty provided for by this section. Each agency which elects to process parking violations shall pay to the county treasurer two dollars and fifty cents ($2.50) for each fund for each parking penalty collected on each violation which is not filed in court. Those payments to the county treasurer shall be made monthly, and the county treasurer shall deposit all those sums in the authorized fund. No issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges established in the resolution adopted pursuant to this chapter, except as otherwise agreed upon by the local governmental entities involved.

(c) The county treasurer shall deposit one dollar ($1) of every two dollars and fifty cents ($2.50) collected pursuant to subdivision (b) into the general fund of the county.

(d) The authority to impose the two-dollar-and-fifty-cent ($2.50) penalty authorized by subdivision (b) shall be reduced to one dollar ($1.00) as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council.

(e) The seven-dollar ($7) additional penalty authorized by subdivision (a) shall be reduced in each county by the additional penalty amount assessed by the county for the local courthouse construction fund established by Section 76100 as of January 1, 1998, when the money in that fund is transferred to the state under Section 70402. The amount each county shall charge as an additional penalty under this section shall be as follows:

Alameda	$5.00	Marin	$5.00	San Luis Obispo	$6.00
Alpine	$5.00	Mariposa	$2.00	San Mateo	$4.75
Amador	$5.00	Mendocino	$7.00	Santa Barbara	$3.50
Butte	$6.00	Merced	$5.00	Santa Clara	$5.50
Calaveras	$3.00	Modoc	$4.00	Santa Cruz	$7.00
Colusa	$6.00	Mono	$5.00	Shasta	$3.50
Contra Costa	$5.00	Monterey	$5.00	Sierra	$7.00
Del Norte	$5.00	Napa	$3.00	Siskiyou	$5.00
El Dorado	$5.00	Nevada	$5.00	Solano	$5.00
Fresno	$7.00	Orange	$3.50	Sonoma	$5.00
Glenn	$4.06	Placer	$4.75	Stanislaus	$5.00
Humboldt	$5.00	Plumas	$5.00	Sutter	$3.00
Imperial	$6.00	Riverside	$4.60	Tehama	$7.00
Inyo	$4.00	Sacramento	$5.00	Trinity	$4.26
Kern	$7.00	San Benito	$5.00	Tulare	$5.00
Kings	$7.00	San Bernardino	$5.00	Tuolumne	$5.00
Lake	$7.00	San Diego	$5.00	Ventura	$5.00
Lassen	$2.00	San Francisco	$6.99	Yolo	$7.00
Los Angeles	$5.00	San Joaquin	$3.75	Yuba	$3.00
Madera	$4.50				

SEC. 25. Section 76100 of the Government Code is amended to read:

76100. (a) Except as provided in Article 3 (commencing with Section 76200), for the purpose of assisting any county in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, the board of supervisors may establish in the county treasury a Courthouse Construction Fund into which shall be deposited the amounts specified in the resolutions adopted by the board of supervisors in accordance with this chapter. The moneys of the Courthouse Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor, subject to the requirements set forth in Chapter 5.7 (commencing with Section 70301).

(b) In conjunction with the acquisition, rehabilitation, construction, or financing of court buildings referred to in subdivision (a), the county may use the moneys of the Courthouse Construction Fund for either of the following:

(1) To rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if a new courtroom or a courtroom building or buildings are acquired, constructed, or financed.

(2) To acquire, rehabilitate, construct, or finance excess courtrooms or an excess courtroom building or buildings, if that excess is anticipated to be needed at a later time.

(c) Any excess courtroom or excess courtroom building or buildings that are acquired, rehabilitated, constructed, or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until the excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amount received as lease or rental payments pursuant to this subdivision shall be deposited in the Courthouse Construction Fund.

(d) The fund moneys shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

SEC. 26. Section 42007 of the Vehicle Code is amended to read:

42007. (a) The clerk of the court shall collect a fee from every person who is ordered or permitted to attend a traffic violator school pursuant to Section 42005 or who attends any other court-supervised program of traffic safety instruction. The fee shall be in an amount equal to the total bail set forth for the eligible offense on the uniform countywide bail schedule. As used in this subdivision, ''total bail'' means the amount established pursuant to Section 1269b of the Penal Code in accordance with the Uniform Statewide Bail Schedule adopted by the Judicial Council, including all assessments, surcharges, and penalty amounts. Where multiple offenses are charged in a single notice to appear, the ''total bail'' is the amount applicable for the greater of the qualifying offenses. However, the court may determine a lesser fee under this subdivision upon a showing that the defendant is unable to pay the full amount.

The fee shall not include the cost, or any part thereof, of traffic safety instruction offered by the school or other program.

(b) Revenues derived from the fee collected under this section shall be deposited in accordance with Section 68084 of the Government Code in the general fund of the county and, as may be applicable, distributed as follows:

(1) In any county in which a fund is established pursuant to Section 76100 or 76101 of the Government Code, the sum of one dollar ($1) for each fund so established shall be deposited with the county treasurer and placed in that fund.

(2) In any county that has established a Maddy Emergency Medical Services Fund pursuant to Section 1797.98a of the Health and Safety Code, an amount equal to the sum of each two dollars ($2) for every seven dollars ($7) that would have been collected pursuant to Section 76000 of the Government Code shall be deposited in that fund. Nothing

in the act that added this paragraph shall be interpreted in a manner that would result in either of the following:

(A) The utilization of penalty assessment funds that had been set aside, on or before January 1, 2000, to finance debt service on a capital facility that existed before January 1, 2000.

(B) The reduction of the availability of penalty assessment revenues that had been pledged, on or before January 1, 2000, as a means of financing a facility which was approved by a county board of supervisors, but on January 1, 2000, is not under construction.

(3) The amount of the fee that is attributable to Section 70372 of the Government Code shall be transferred pursuant to subdivision (f) of that section.

(c) For fees resulting from city arrests, an amount equal to the amount of base fines that would have been deposited in the treasury of the appropriate city pursuant to paragraph (3) of subdivision (b) of Section 1463.001 of the Penal Code shall be deposited in the treasury of the appropriate city.

(d) As used in this section, ''court-supervised program'' includes, but is not limited to, any program of traffic safety instruction the successful completion of which is accepted by the court in lieu of adjudicating a violation of this code.

(e) The Judicial Council shall study the minimum eligibility criteria governing drivers seeking to attend traffic violator's school, and report to the Legislature on the advisability of uniform statewide criteria on or before January 1, 1993.

(f) The clerk of the court, in a county that offers traffic school shall include in any courtesy notice mailed to a defendant for an offense that qualifies for traffic school attendance the following statement:

NOTICE: If you are eligible and decide not to attend traffic school your automobile insurance may be adversely affected.

SEC. 27. 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 593

An act to amend Section 7072 of the Government Code, and to amend Sections 18021.7, 50530.5, and 50545 of the Health and Safety Code, relating to local development.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 7072 of the Government Code is amended to read:

7072. For purposes of this chapter, the following definitions shall apply:

(a) ''Agency'' means the Department of Housing and Community Development.

(b) ''Date of original designation'' means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the agency pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) ''Eligible area'' means any of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the agency, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the agency for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(3) A geographic area that meets at least two of the following criteria:

(A) The census tracts within the proposed zone have an unemployment rate not less than 3 percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(B) The county of the proposed zone has more than 70 percent of the children enrolled in public school participating in the federal free lunch program.

(C) The median household income for a family of four within the census tracts of the proposed zone does not exceed 80 percent of the statewide median income for the most recently available calendar year.

(d) ''Enterprise zone'' means any area within a city, county, or city and county that is designated as such by the agency in accordance with the provisions of Section 7073.

(e) ''Governing body'' means a county board of supervisors or a city council, as appropriate.

(f) ''High technology industries'' include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) ''Resident,'' unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) ''Targeted employment area'' means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a ''targeted employment area'' is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If

an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

SEC. 2. Section 18021.7 of the Health and Safety Code is amended to read:

18021.7. (a) (1) In addition to other remedies provided in this part, the Director of Housing and Community Development or his or her designee may issue a citation that assesses a civil penalty payable to the department to any licensee who violates Section 18021.5, 18029.6, or 18030, subdivision (b) of Section 18032, Section 18035, 18035.1, 18035.2, 18035.3, 18036, 18039, 18045, 18045.5, 18045.6, 18046, or 18058, subdivision (a) of Section 18059, subdivision (b) of Section 18059.5, subdivision (c) of Section 18060, subdivision (c) of Section 18060.5, Section 18061, subdivision (d), (i), or (j) of Section 18061.5, subdivision (a) or (b) of Section 18062, subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 18062.2, subdivision (c) of Section 18063, or Section 18080.5.

(2) A violation of subdivision (d) of Section 18060.5 is also cause for citation if both the dealer and the manufacturer receive written notice of a warranty complaint from the complainant, from the department, or another source of information, and, at a minimum, the 90-day period provided for correction of substantial defects pursuant to Section 1797.7 of the Civil Code has expired.

(3) Each citation and related civil penalty assessment shall be issued no later than six months after discovery of the violation.

(b) The amount of any civil penalty assessed pursuant to subdivision (a) shall be one hundred dollars ($100) for each violation, but shall be increased to two hundred fifty dollars ($250) for each subsequent violation of the same prohibition for which a citation for the subsequent violation is issued within one year of the citation for the previous violation. The violation or violations giving cause for the citation shall be corrected if applicable, and payment of the civil penalty shall be remitted to the department within 45 days of the date of issuance of the citation. Civil penalties received by the department pursuant to this

section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund.

(c) Any person or entity served a citation pursuant to this section may petition for, and shall be granted, an informal hearing before the director or his or her designee. The petition shall be a written request briefly stating the grounds for the request. Any petition to be considered shall be received by the department within 30 days of the date of issuance of the citation.

(d) Upon receipt of a timely and complying petition, the department shall suspend enforcement of the citation and set a time and place for the informal hearing and shall give the licensee written notice thereof. The hearing shall commence no later than 30 days following receipt of the petition or at another time scheduled by the department pursuant to a request by the licensee or department if good and sufficient cause exists. If the licensee fails to appear at the time and place scheduled for the hearing, the department may notify the licensee in writing that the petition is dismissed and that compliance with terms of the citation shall occur within 10 days after receipt of the notification.

(e) The department shall notify the petitioner in writing of its decision and the reasons therefor within 30 days following conclusion of the informal hearing held pursuant to this section. If the decision upholds the citation, in whole or in part, the licensee shall comply with the citation in accordance with the decision within 30 days after the decision is mailed by the department.

(f) Nothing in this section shall be construed to preclude remedies available under other provisions of law.

SEC. 3. Section 50530.5 of the Health and Safety Code is amended to read:

50530.5. As used in this chapter:

(a) ''Housing'' includes, but is not limited to, manufactured housing.

(b) ''Predevelopment loan'' means a loan for required expenses, other than administrative and construction, which are incurred by eligible sponsors in the process of, and prior to, securing long-term financing for construction, conversion, preservation, or rehabilitation of assisted housing, and which are recoverable once long-term financing is obtained. The purposes for which predevelopment loans may be made include, but are not limited to, the costs of, or the costs associated with, land purchase or options to buy land; options or deposits to buy or preserve existing government-assisted rental housing for the purpose of preserving the affordability of the units; professional services such as architectural, engineering, or legal services; permit or application fees; and bonding, site preparation, related water or sewer development, or material expenses. In addition, the loans may be made for the purpose of extending the time for exercising an option or extending the time

period for repayment of an advance previously obtained. These loan funds may be deposited in banks as compensating balances to establish lines of credit for participating nonprofit corporations.

(c) ''Fund'' means the Predevelopment Loan Fund which is replenished continuously by repayments of principal on loans made from the fund.

(d) ''Land purchase loan'' means a loan for the costs incurred by an eligible sponsor in obtaining an option on, or purchasing suitable land for, the future development of assisted housing, including, but not limited to, costs associated with transfer of title, appraisals, payment of property taxes, surveys, and necessary maintenance of the land.

(e) ''Eligible sponsors'' means local governmental agencies, nonprofit corporations, including cooperative housing corporations, and limited liability companies or limited partnerships where all of the general partners are nonprofit mutual or public benefit corporations.

SEC. 4. Section 50545 of the Health and Safety Code is amended to read:

50545. Five million dollars ($5,000,000) of the funds appropriated for the purposes of this chapter in Item 2240-114-0001 of the Budget Act of 2000 shall be transferred to the Rental Housing Construction Fund created pursuant to Section 50740 to be used for predevelopment loans pursuant to Chapter 3.5 (commencing with Section 50530), subject to the following provisions:

(a) All projects shall be located within one-half mile of an existing or planned transit station proposed for development. For these purposes, a transit station is a site where two or more mass transit modes, or one transit mode with three or more mass transit lines, are accessible to the public.

(b) Notwithstanding any other provision of law, the department may establish interest rates between 3 and 7 percent based on the department's analysis of project need.

(c) In addition to the activities eligible under the Predevelopment Loan Program, funds awarded pursuant to this section may be used for master environmental impact reports or other environmental documents that would access potential impacts in advance and propose measures to mitigate negative impacts.

(d) Awards made pursuant to this section shall require a 50 percent match from the local agency in which the site is located.

(e) In addition to those eligible sponsors specified in subdivision (e) of Section 50530.5, eligible sponsors shall include limited liability companies and limited partnerships where all managing members or general partners are nonprofit organizations.

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CHAPTER 594

An act to amend Section 5463 of the Business and Professions Code, to amend Section 20351 of the Public Contract Code, to amend Sections 120050.2, 120051, 120051.6, and 120054 of, to add Section 120051.1 to, and to add Chapter 6 (commencing with Section 125700) to Division 11.5 of, the Public Utilities Code, to amend Sections 10753 and 10753.7 of the Revenue and Taxation Code, to amend Sections 188.8 and 302 of the Streets and Highways Code, and to amend Sections 1651, 1800, 1810, 1810.7, 4456, 4466, 5068, 5101.2, 5200, 5201, 6700, 9101, 9107, 11204, 12814, 13370, 15210, 15250.7, 16000, 16021, 16370.5, 16431, 24609, and 27400 of, to add Section 11519 to, and to repeal Sections 5004.6, 5070, 5071, 5071.1, 5073, and 5080 of, the Vehicle Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 5463 of the Business and Professions Code is amended to read:

5463. The director may revoke any license or permit for the failure to comply with this chapter and may remove and destroy any advertising display placed or maintained in violation of this chapter after 30 days' written notice is forwarded by mail to the permitholder at his or her last known address. If no permit has been issued, a copy of the notice shall be forwarded by mail to the display owner, property owner, or advertiser at his or her last known address.

Notwithstanding any other provision of this chapter, the director or any authorized employee may summarily and without notice remove and destroy any advertising display placed in violation of this chapter which is temporary in nature because of the materials of which it is constructed or because of the nature of the copy thereon.

For the purpose of removing or destroying any advertising display placed in violation of this chapter, the director or the director's authorized agent may enter upon private property.

SEC. 2. Section 20351 of the Public Contract Code is amended to read:

20351. Contracts for the construction in excess of ten thousand dollars ($10,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in an emergency declared by the vote of two-thirds of the membership of the board.

SEC. 3. Section 120050.2 of the Public Utilities Code is amended to read:

120050.2. The board consists of 15 members selected as follows:

(a) One member of the County of San Diego Board of Supervisors, appointed by the board of supervisors.

(b) Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the city council.

(c) One member of each city council appointed individually by the City Councils of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee.

(d) One person, a resident of San Diego County, elected by a two–thirds vote of the board, a quorum being present, who shall serve as chairperson of the board. The chairperson shall serve for a term of four years, except that he or she is subject to removal at any time by a two–thirds vote of the board, a quorum being present. If the person elected chairperson is also a member of the board, the appointing power may not fill the vacancy created by the election of that member as chairperson as long as that member remains chairperson and, if removed as chairperson, that person shall resume the position on the board he or she vacated upon election as chairperson. Section 120102.5 does not apply to any vote taken under this subdivision. Further, in the event that the chairperson is elected from the membership of the board, the County of San Diego shall then have two members appointed by the board of supervisors and the board membership shall remain at 15. In the event the subsequently elected chairperson is not a member, the membership on the board of the second appointee of the County of San Diego shall be suspended and the board membership shall remain at 15.

SEC. 4. Section 120051 of the Public Utilities Code is amended to read:

120051. The member of the board of supervisors appointed pursuant to subdivision (a) of Section 120050.2 shall represent one of the two supervisorial districts with the greatest percentage of its area within the incorporated area of the County of San Diego within the area under the jurisdiction of the transit development board as defined in Section 120054.

SEC. 5. Section 120051.1 is added to the Public Utilities Code, to read:

120051.1. The member of the board of supervisors appointed pursuant to subdivision (d) of Section 120050.2 shall represent the supervisorial district with the greatest percentage of its area within the unincorporated area of the County of San Diego under the jurisdiction of the transit development board as defined in Section 120054.

SEC. 6. Section 120051.6 of the Public Utilities Code is amended to read:

120051.6. The alternate members of the board shall be appointed as follows:

(a) The County of San Diego Board of Supervisors shall appoint any other county supervisor who qualifies for appointment pursuant to Section 120051 to serve as an alternate member of the transit development board.

(b) The City Council of the City of San Diego shall appoint a member of the city council not already appointed pursuant to subdivision (b) of Section 120050.2 to serve as an alternate member of the transit development board for each of the members appointed by the city council to the transit development board.

(c) The city councils specified in subdivision (c) of Section 120050.2 shall each individually appoint a member of their respective city councils not already appointed pursuant to that subdivision to serve as an alternate member of the transit development board.

(d) If the board elects a person other than a member of the board to serve as chairperson, the board may, upon a two-thirds vote, a quorum being present, appoint a San Diego County resident as an alternate member of the board for that person elected chairperson. If the board elects a person who is a member of the board to serve as chairperson, the County of San Diego shall appoint an alternate supervisor for the supervisor appointed pursuant to subdivision (d) of Section 120050.2.

SEC. 7. Section 120054 of the Public Utilities Code is amended to read:

120054. The area of the board shall consist of all of the following:

(a) The Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, and Santee.

(b) All of the unincorporated area of the County of San Diego, except as otherwise included within the North San Diego County Transit Development Board in Section 125052.

(c) All the unincorporated area of the County of San Diego surrounded by the cities specified in subdivisions (a) and (b).

SEC. 8. Chapter 6 (commencing with Section 125700) is added to Division 11.5 of the Public Utilities Code, to read:

CHAPTER 6. BONDS AND OTHER EVIDENCES OF INDEBTEDNESS

125700. The board may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by the board, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the board.

125701. The board is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code). The

term ''enterprise,'' as used in the Revenue Bond Law of 1941, for all purposes of this chapter, includes the transit system or any or all transit facilities and all additions, extensions, and improvements thereto authorized to be acquired, constructed, or completed by the board.

The board may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by the board or for transit equipment described in Section 125702 authorized to be acquired by the board or, in the alternative, the board may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities or for transit equipment described in Section 125702 authorized to be acquired by the board.

Nothing in this chapter prohibits the board from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the board may determine.

125702. The board may purchase transit equipment such as cars, trolley buses, motorbuses, light rail vehicles, or rolling equipment, and may execute agreements, leases, and equipment trust certificates in the forms customarily used by private corporations engaged in the transit business appropriate to effect the purchase and leasing of transit equipment, and may dispose of the equipment trust certificates upon the terms and conditions that the board may deem appropriate.

Payment for transit equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates that are or will be legally available to the board. Title to the equipment may not vest in the board until the equipment trust certificates are paid.

125703. The agreement to purchase or lease transit equipment may direct the vendor or lessor to sell and assign or lease the transit equipment to a bank or trust company duly authorized to transact business in the state as trustee for the benefit and security of the equipment trust certificates, and may direct the trustee to deliver the transit equipment to one or more designated officers of the board and may authorize the board to simultaneously therewith execute and deliver an installment purchase agreement or a lease of that equipment to the board.

125704. The agreements and leases shall be duly acknowledged before a person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds.

The agreements, leases, and equipment trust certificates shall be authorized by resolution of the board and shall contain covenants, conditions, and provisions that may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from any legally

available source or sources of funds as may be specified in the certificates.

125705. The covenants, conditions, and provisions of the agreements, leases, and equipment trust certificates may not conflict with any trust agreement or similar document securing the payment of bonds, notes, or certificates of the board.

125706. An executed copy of each agreement and lease shall be filed in the office of the Secretary of State, for a fee of one dollar ($1) for each copy filed.

The filing constitutes notice to any subsequent judgment creditor or any subsequent purchaser.

125707. The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), and the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), are applicable to the board.

125708. Chapter 1 (commencing with Section 99000) of Part 11 of Division 10 is applicable to the board.

125709. The board shall be considered a "local agency," as defined in subdivision (h) of Section 53317 of the Government Code, and the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code are applicable to the board.

125710. The board shall be considered to be a "local agency" as defined in subdivision (f) of Section 6585 of the Government Code, and Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code is applicable to the board.

125711. The board may borrow money in accordance with Article 7 (commencing with Section 53820), Article 7.6 (commencing with Section 53580), or Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

125712. The board may borrow money in anticipation of the sale of bonds that have been authorized to be issued, but that have not been sold and delivered, and may issue negotiable bond anticipation notes therefor, and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond application notes, including the renewals thereof, may not exceed five years from the date of delivery of the original bond anticipation notes.

The bond anticipation notes may be paid from any money of the board available therefor and not otherwise pledged. If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the board in anticipation of which they were issued. The bond anticipation notes may not be issued in any amount in

excess of the aggregate amount of bonds that the board has not been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding.

The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations that a resolution of the board authorizing the issuance of bonds may contain.

125713. The board may issue negotiable promissory notes pursuant to this section to acquire funds for any board purposes. The maturity of the promissory notes may not be later than five years from the date thereof. Those notes shall bear interest at a rate not to exceed 12 percent per year. Those notes shall be payable from any source of revenue available to the board.

125714. The board may bring an action to determine the validity of any of its bonds, equipment trust certificates, warrants, notes, or other evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

125715. All bonds and other evidences of indebtedness issued by the board under this chapter, and the interest thereon, are free and exempt from all taxation within the state, except for transfer, franchise, inheritance, and estate taxes.

125716. Notwithstanding any other provisions of this division or of any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the board of any bonds, bonds with a pledge of revenues, bonds for any and all evidences of indebtedness or liability constitute a contract between the board and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the board or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

Nothing in this division or in any other law relieves the board or the territory included within it from any bonded or other debt or liability contracted by the board. Upon dissolution of the board or upon withdrawal of territory therefrom, that territory formerly included within the board, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the board had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the board shall be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as they are outstanding, regardless of any change in ownership, operation, or control of the revenue-producing improvements, works, facilities, or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

SEC. 9. Section 10753 of the Revenue and Taxation Code is amended to read:

10753. (a) Upon the first sale of a new vehicle to a consumer and upon each sale of a used vehicle to a consumer, the department shall determine the market value of the vehicle on the basis of the cost price to the purchaser as evidenced by a certificate of cost, but not including California sales or use tax or any local sales, transactions, use, or other local tax. ''Cost price'' includes the value of any modifications made by the seller.

(b) Notwithstanding subdivision (a), the department shall not redetermine the market value of used vehicles, or modify the vehicle license fee classification of used vehicles determined pursuant to Section 10753.2, when the seller is the parent, grandparent, child, grandchild, or spouse of the purchaser, and the seller is not engaged in the business of selling vehicles subject to registration under the Vehicle Code, or when a lessor, as defined in Section 372 of the Vehicle Code, transfers title and registration of a vehicle to the lessee at the expiration or termination of a lease.

(c) (1) In the event that any commercial vehicle is modified or additions are made to the chassis or body at a cost of two thousand dollars ($2,000) or more, but not including any change of engine of the same type or any cost of repairs to a commercial vehicle, the owner of the commercial vehicle shall report any modification or addition to the department and the department shall classify or reclassify the commercial vehicle in its proper class as provided in Section 10753.2, taking into consideration the increase in the market value of the commercial vehicle due to those modifications or additions, and any reclassification resulting in an increase in market value shall be based on the cost to the consumer of those modifications or additions. In the event any vehicle is modified or altered resulting in a decrease in the market value thereof of two hundred dollars ($200) or more as reported to and

determined by the department, the department shall classify or reclassify the vehicle in its proper class as provided in Section 10753.2.

(2) Paragraph (1) does not apply under any of the following conditions:

(A) When the cost of any modification or addition to the chassis or body of a commercial vehicle is less than two thousand dollars ($2,000).

(B) When the cost is for modifications or additions necessary to incorporate a system approved by the State Air Resources Board as meeting the emission standards set forth in subdivisions (a) and (b) of former Section 39102 and former Section 39102.5 of the Health and Safety Code as they read on December 31, 1975.

(C) When the cost is for modifications that are necessary to enable a disabled person to use or operate the vehicle.

(3) For purposes of this subdivision, ''commercial vehicle'' means a ''commercial vehicle,'' as defined in Section 260 of the Vehicle Code, that is regulated by the Department of the California Highway Patrol pursuant to Sections 2813 and 34500 of the Vehicle Code.

(d) This section also applies to a system as specified in subdivision (c) that is approved by the State Air Resources Board as meeting the emission standards specified in subdivisions (a) and (b) of former Section 39102 and former Section 39102.5 of the Health and Safety Code as they read on December 31, 1975, for vehicles 6,001 pounds or less, manufacturer's gross vehicle weight, controlled to meet exhaust emission standards when sold new, when that system is used in any vehicle over 6,001 pounds or any vehicle 6,001 pounds or less not controlled to meet exhaust emission standards.

(e) The temporary attachment of any camper, as defined in Section 243 of the Vehicle Code, to a vehicle is not a modification or addition for the purposes of subdivision (c).

(f) The attachment to a vehicle of radiotelephone equipment furnished by a telephone corporation, as defined in Section 234 of the Public Utilities Code, is not a modification or addition for the purpose of subdivision (c), when that equipment is not owned by the owner of the vehicle.

(g) For purposes of this section, ''vehicle'' does not include trailers or semitrailers.

SEC. 10. Section 10753.7 of the Revenue and Taxation Code is amended to read:

10753.7. (a) Upon the sale or transfer of ownership of a used vehicle currently registered in this state, if any license fee due thereon has already been paid, no adjustment of the current year license fee shall be made.

(b) Any adjustment of vehicle license fees, based upon a redetermination of market value pursuant to subdivision (a) of Section

10753 and modification of vehicle license fee classification pursuant to Section 10753.2, shall occur upon the expiration of current registration and shall be reflected in the fees due for the first renewal of registration following the sale or transfer of ownership of that used vehicle.

SEC. 11. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. (a) From the funds programmed pursuant to Section 188 for regional improvement projects, the commission shall approve programs and program amendments, so that funding is distributed to each county of County Group No. 1 and in each county of County Group No. 2 during the county share periods commencing July 1, 1997, and ending June 30, 2004, and each period of four years thereafter. The amount shall be computed as follows:

(1) The commission shall compute, for the county share periods all of the money to be expended for regional improvement projects in County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(2) From the amount computed for County Group No. 1 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula that is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(3) From the amount computed for County Group No. 2 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula that is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(b) Notwithstanding subdivision (a), that portion of the county population and state highway mileage in El Dorado and Placer Counties that is included within the jurisdiction of the Tahoe Regional Planning Agency shall be counted separately toward the area under the jurisdiction of the Tahoe Regional Transportation Agency and may not be included in El Dorado and Placer Counties. The commission shall approve programs, program amendments, and fund reservations for the area under the jurisdiction of the Tahoe Regional Transportation Agency that shall be calculated using the formula described in paragraph (2) of subdivision (a).

(c) A transportation planning agency designated pursuant to Section 29532 of the Government Code, or a county transportation commission created by Division 12 (commencing with Section 130000) of the Public Utilities Code, may adopt a resolution to pool its county share programming with any county or counties adopting similar resolutions to consolidate its county shares for two consecutive county share periods

into a single share covering both periods. A multicounty transportation planning agency with a population of less than three million may also adopt a resolution to pool the share of any county or counties within its region. The resolution shall provide for pooling the county share programming in any of the pooling counties for the new single share period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the county share period.

(d) For the purposes of this section, funds programmed shall include the following costs pursuant to subdivision (b) of Section 14529 of the Government Code:

(1) The amounts programmed or budgeted for both components of project development in the original programmed year.

(2) The amount programmed for right-of-way in the year programmed in the most recent state transportation improvement program. If the final estimate is greater than 120 percent or less than 80 percent of the amount originally programmed, the amount shall be adjusted for final expenditure estimates at the time of right-of-way certification.

(3) The engineer's final estimate of project costs, including construction engineering, presented to the commission for approval pursuant to Section 14533 of the Government Code in the year programmed in the most recent state transportation improvement program. If the construction contract award amount is less than 80 percent of the engineer's final estimate, excluding construction engineering, the department shall notify the commission and the commission may adjust its project allocation accordingly.

(4) Project costs shown in the program, as amended, where project allocations have not yet been approved by the commission, escalated to the date of scheduled project delivery.

(e) Project costs may not be changed to reflect any of the following:

(1) Differences that are within 20 percent of the amount programmed for actual project development cost.

(2) Actual right-of-way purchase costs.

(3) Construction contract award amounts, except when those amounts are less than 80 percent of the engineer's final estimate, excluding construction engineering, and the commission has adjusted the project construction allocation.

(4) Changes in construction expenditures, except for supplemental project allocations made by the commission.

(f) For the purposes of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each county share period.

(g) For the purposes of this section, ''state highway miles'' means the miles of state highways open to vehicular traffic at the beginning of each county share period.

(h) It is the intent of the Legislature that there is to be flexibility in programming under this section and Section 188 so that, while ensuring that each county will receive an equitable share of state transportation improvement program funding, the types of projects selected and the programs from which they are funded may vary from county to county.

(i) Commencing with the four-year period commencing on July 1, 2004, individual county share shortfalls and surpluses at the end of each four-year period, if any, shall be carried forward and credited or debited to the following four years.

(j) The commission, with the consent of the department, may consider programming projects in the state transportation improvement program in a county with a population of not more than 1,000,000 at a level higher or lower than the county share, when the regional agency either asks to reserve part or all of the county's share until a future programming year, to build up a larger share for a higher cost project, or asks to advance an amount of the share, in an amount not to exceed 200 percent of the county's current share, for a larger project, to be deducted from shares for future programming years. After consulting with the department, the commission may adjust the level of programming in the regional program in the affected region against the level of interregional programming in the improvement program to accomplish the reservation or advancement, for the current state transportation improvement program. The commission shall keep track of any resulting shortfalls or surpluses in county shares.

(k) Notwithstanding subdivision (a), in a region defined by Section 66502 of the Government Code, the transportation planning agency may adopt a resolution to pool the county share of any county or counties within the region, if each county receives no less than 85 percent and not more than 115 percent of its county share for a single county share period and 100 percent of its county share over two consecutive county share periods. The resolution shall be submitted to the commission not later than May 1, immediately preceding the commencement of the county share period.

(*l*) Federal funds used for federal demonstration projects that use federal obligational authority otherwise available for other projects shall be subtracted from the county share of the county where the project is located.

SEC. 12. Section 302 of the Streets and Highways Code is amended to read:

302. (a) Route 2 is from:

(1) The point where Santa Monica Boulevard crosses the city limits of Santa Monica at Centinela Avenue to Route 101 in Los Angeles, except the relinquished portions described in subdivision (b).

(2) Route 101 in Los Angeles to Route 210 in La Canada-Flintridge via Glendale.

(3) Route 210 in La Canada-Flintridge to Route 138 via Wrightwood.

(b) Notwithstanding subdivision (a), the relinquished former portions of Route 2 within the city limits of West Hollywood and Santa Monica, and between Route 405 and Moreno Drive in Los Angeles, are not a state highway and are not eligible for adoption under Section 81. Those cities shall maintain signs within their respective jurisdictions directing motorists to the continuation of Route 2.

(c) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Beverly Hills the portion of Route 2 that is located between the city's west city limit at Moreno Drive and the city's east city limit at Doheny Drive, upon terms and conditions the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 2 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 2 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(4) For the portions of Route 2 that are relinquished, the City of Beverly Hills shall maintain within its jurisdiction signs directing motorists to the continuation of Route 2.

SEC. 13. Section 1651 of the Vehicle Code is amended to read:

1651. (a) The director may adopt and enforce rules and regulations as may be necessary to carry out the provisions of this code relating to the department.

(b) Rules and regulations shall be adopted, amended, or repealed 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).

SEC. 14. Section 1800 of the Vehicle Code is amended to read:

1800. (a) The department shall file each application received for the registration of a vehicle and shall keep a record of each as follows:

(1) Under a distinctive registration number assigned to the vehicle.

(2) Alphabetically, under the name of the owner.

(3) Under the motor or a permanent identifying number of the vehicle as may be determined by the department.

(4) In the discretion of the department, in any other manner it may deem desirable.

(b) The department shall file every application for a license to operate a motor vehicle received by it and maintain all of the following:

(1) A suitable index containing, in alphabetical order, all applications denied. On the applications shall be noted the reasons for the denial.

(2) A suitable index containing, in alphabetical order, all applications granted.

(3) A suitable index containing, in alphabetical order, the name of every licensee whose license has been suspended or revoked by the department or by a court and after each name notes the reasons for the action and the period of revocation or suspension.

SEC. 15. Section 1810 of the Vehicle Code is amended to read:

1810. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.6, 1808.7, 1808.8, and paragraph (2) of subdivision (a) of Section 12800.5, the department may permit inspection of, or sell, or both, information from its records concerning the registration of any vehicle or information from the files of drivers' licenses at a charge sufficient to pay at least the actual cost to the department for providing the inspection or sale of the information, including, but not limited to, costs incurred by the department in carrying out subdivision (b), with the charge for the information to be determined by the director. This section does not apply to statistical information of the type previously compiled and distributed by the department.

(b) (1) With respect to the inspection or sale of information concerning the registration of any vehicle or of information from the files of drivers' licenses, the department shall establish, by regulation, administrative procedures under which any person making a request for that information shall be required to identify himself or herself and state the reason for making the request. The procedures shall provide for the verification of the name and address of the person making a request for the information, and the department may require the person to produce that information as it determines is necessary to ensure that the name and address of the person is the true name and address. The procedures may provide for a 10-day delay in the release of the requested information. The procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall establish, by regulation, a reasonable period of time for which a record of all the foregoing shall be maintained.

(2) The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued

a requester code by the department, or any court of competent jurisdiction.

(c) With respect to the inspection or sale of information from the files of drivers' licenses, the department may require both the full name of the driver and either the driver's license number or date of birth as identifying points of the record, except that the department may disclose a record without two identifying points if the department determines that the public interest in disclosure outweighs the public interest in personal privacy.

(d) With respect to the inspection or sale of information from the files of drivers' licenses, certificates of ownership, and registration cards, the department may not allow, for a fee or otherwise, copying by the public.

SEC. 16. Section 1810.7 of the Vehicle Code is amended to read:

1810.7. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.6, 1808.7, and 1808.21, the department may authorize, by special permit, any person to access the department's electronic database, as provided for in this section, for the purpose of obtaining information for commercial use.

(b) The department may limit the number of permits issued under this section, and may restrict, or establish priority for, access to its files as the department deems necessary to avoid disruption of its normal operations, or as the department deems is in the best interest of the public.

(c) The department may establish minimum volume levels, audit and security standards, and technological requirements, or any terms and conditions it deems necessary for the permits.

(d) As a condition of issuing a permit under this section, the department shall require each direct-access permittee to file a performance bond or other financial security acceptable to the department, in an amount the department deems appropriate.

(e) The department shall charge fees for direct-access service permits, and shall charge fees pursuant to Section 1810 for any information copied from the files.

(f) The department shall ensure that information provided under this section includes only the public portions of records.

(g) On and after January 1, 1992, the director shall report every three years to the Legislature on the implementation of this section. The report shall include the number and location of direct-access permittees, the volume and nature of direct-access inquiries, procedures the department has taken to ensure the security of its files, and the costs and revenues associated with the project.

(h) The department shall establish procedures to ensure confidentiality of any records of residence addresses and mailing

addresses as required by Sections 1808.21, 1808.22, 1808.45, 1808.46, and 1810.2.

SEC. 17. Section 4456 of the Vehicle Code is amended to read:

4456. (a) When selling a vehicle, dealers and lessor-retailers shall use numbered report-of-sale forms issued by the department. The forms shall be used in accordance with the following terms and conditions:

(1) The dealer or lessor-retailer shall attach for display a copy of the report of sale on the vehicle before the vehicle is delivered to the purchaser.

(2) The dealer or lessor-retailer shall submit to the department an application accompanied by all fees and penalties due for registration or transfer of registration of the vehicle within 30 days from the date of sale, as provided in subdivision (c) of Section 9553, if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle. Penalties due for noncompliance with this paragraph shall be paid by the dealer or lessor-retailer. The dealer or lessor-retailer may not charge the purchaser for the penalties.

(3) As part of an application to transfer registration of a used vehicle, the dealer or lessor-retailer shall include all of the following information on the certificate of title, application for a duplicate certificate of title, or form prescribed by the department:

(A) Date of sale and report of sale number.

(B) Purchaser's name and address.

(C) Dealer's name, address, number, and signature or signature of authorized agent.

(D) Salesperson number.

(4) If the department returns an application and the application was first received by the department within 30 days of the date of sale of the vehicle if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle, or within 30 days from the date that the application is first returned by the department if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, whichever is later.

(5) If the department returns an application and the application was first received by the department more than 30 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle.

(6) An application first received by the department more than 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and

40 days if the vehicle is a new vehicle, is subject to the penalties specified in subdivisions (a) and (b) of Section 4456.1.

(7) The dealer or lessor-retailer shall report the sale under Section 5901.

(b) (1) A transfer that takes place through a dealer conducting a wholesale vehicle auction shall be reported to the department by that dealer on a single form approved by the department. The completed form shall contain, at a minimum, all of the following information:

(A) The name and address of the seller.

(B) The seller's dealer number, if applicable.

(C) The date of delivery to the dealer conducting the auction.

(D) The actual mileage of the vehicle as indicated by the vehicle's odometer at the time of delivery to the dealer conducting the auction.

(E) The name, address, and occupational license number of the dealer conducting the auction.

(F) The name, address, and occupational license number of the buyer.

(G) The signature of the dealer conducting the auction.

(2) Submission of the completed form specified in paragraph (1) to the department shall fully satisfy the requirements of subdivision (a) and subdivision (a) of Section 5901 with respect to the dealer selling at auction and the dealer conducting the auction.

(3) The single form required by this subdivision does not relieve a dealer of any obligation or responsibility that is required by any other provision of law.

(c) A vehicle displaying a copy of the report of sale may be operated without license plates or registration card until either of the following, whichever occurs first:

(1) The license plates and registration card are received by the purchaser.

(2) A six-month period, commencing with the date of sale of the vehicle, has expired.

SEC. 18. Section 4466 of the Vehicle Code is amended to read:

4466. (a) The department may not issue a duplicate or substitute certificate of title or license plate if, after a search of the records of the department, the registered owner's address, as submitted on the application, is different from that which appears in the records of the department, unless the registered owner applies in person and presents all of the following:

(1) Proof of ownership of the vehicle that is acceptable to the department. Proof of ownership may be the certificate of title, registration certificate, or registration renewal notice, or a facsimile of any of those documents, if the facsimile matches the vehicle record of the department.

(2) A driver's license or identification card containing a picture of the licensee or cardholder issued to the registered owner by the department pursuant to Chapter 1 (commencing with Section 12500) of Division 6. The department shall conduct a search of its records to verify the authenticity of any document submitted under this paragraph.

(A) If the registered owner is a resident of another state or country, the registered owner shall present a driver's license or identification card issued by that state or country. In addition, the registered owner shall provide photo documentation in the form of a valid passport, military identification card, identification card issued by a state or United States government agency, student identification card issued by a college or university, or identification card issued by a California-based employer. If a resident of another state is unable to present the required photo identification, the department shall verify the authenticity of the driver's license or identification card by contacting the state that issued the driver's license or identification card.

(B) If the registered owner is not an individual, the person submitting the application shall submit the photo identification required under this paragraph, as well as documentation acceptable to the department that demonstrates that the person is employed by an officer of the registered owner.

(3) If the application is for the purpose of replacing a license plate that was stolen, a copy of a police report identifying the plate as stolen.

(4) If the application is for the purpose of replacing a certificate of title or license plate that was mutilated or destroyed, the remnants of the mutilated or destroyed document or plate.

(5) If the department has a record of a prior issuance of a duplicate or substitute certificate of title or license plate for the vehicle within the past 90 days, a copy of a report from the Department of the California Highway Patrol verifying the vehicle identification number of the vehicle.

(b) Subdivision (a) does not apply if any of the following apply:

(1) The registered owner's name, address, and driver's license or identification card number submitted on the application match the name, address, and driver's license or identification card number contained in the department's records.

(2) An application for a duplicate or substitute certificate of title or license plate is submitted by or through a legal owner, if the legal owner is not the same as the registered owner or as the lessee under Section 4453.5, a dealer, a dismantler, an insurer, an agent of the insurer, or a salvage pool.

(3) The vehicle is registered under the International Registration Plan pursuant to Section 8052 or under the Permanent Fleet Registration

program pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1.

(4) The vehicle is an implement of husbandry, as defined in Section 36000, or a tow dolly, or has been issued an identification plate under Section 5014 or 5014.1.

(c) The department shall issue one or more license plates only to the registered owner or lessee. The department shall issue the certificate of title only to the legal owner, or if none, then to the registered owner, as shown on the department's records.

SEC. 19. Section 5004.6 of the Vehicle Code is repealed.

SEC. 20. Section 5068 of the Vehicle Code is amended to read:

5068. (a) (1) Any veterans' organization may apply either individually or with other veterans' organizations to meet the application threshold set forth in Section 5060 for special interest plates. An organization that meets the minimum application requirement by applying with other organizations under this subdivision shall be issued a regular license plate bearing a distinctive design or decal approved under subdivision (a) of Section 5060.

(2) Special interest plates issued under this section may be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle, to be displayed in addition to the design or decal authorized under paragraph (1), subject to Section 5105.

(b) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following fees shall be paid by individuals applying for a veterans' organization special interest license plate or decal:

(1) Thirty dollars ($30) for the initial issuance of the plates and decals. The plates shall be permanent and may not be required to be replaced.

(2) Thirty dollars ($30) for each renewal of registration that includes the continued display of the plates or decals.

(3) Fifteen dollars ($15) for transfer of the plates to another vehicle.

(4) Thirty-five dollars ($35) for replacement plates, if they become damaged or unserviceable.

(5) Ten dollars ($10) for replacement decals, if they become damaged or unserviceable.

(6) Forty dollars ($40) for the personalization of the plates, as authorized under paragraph (2) of subdivision (a).

(c) This section shall become operative on July 1, 2002.

SEC. 21. Section 5070 of the Vehicle Code is repealed.

SEC. 22. Section 5071 of the Vehicle Code is repealed.

SEC. 23. Section 5071.1 of the Vehicle Code is repealed.

SEC. 24. Section 5073 of the Vehicle Code is repealed.

SEC. 25. Section 5080 of the Vehicle Code is repealed.

SEC. 26. Section 5101.2 of the Vehicle Code is amended to read:

5101.2. (a) A person otherwise eligible under this article who is a firefighter or a retired firefighter may apply for special license plates for a vehicle under this article. License plates issued pursuant to this section shall be issued in accordance with Section 5060.

(b) The applicant, by satisfactory proof, shall show all of the following:

(1) The applicant is, or has retired, in good standing as an officer, an employee, or a member of a fire department or a fire service of the state, a county, a city, a district, or any other political subdivision of the state, whether in a volunteer, partly paid, or fully paid status.

(2) The applicant is, or was until retirement, regularly employed as a firefighter or regularly enrolled as a volunteer firefighter.

(3) The applicant's principal duties fall, or fell until retirement, within the scope of active firefighting and any of the following activities:

(A) Fire prevention service.

(B) Fire training.

(C) Hazardous materials abatement.

(D) Arson investigation.

(E) Emergency medical services.

(c) The special license plates issued under this section shall contain the words ''California Firefighter'' and shall run in a regular numerical series.

(d) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following special license plate fees shall be paid:

(1) A fee of thirty-five dollars ($35) for the initial issuance of the special license plates. These special license plates shall be permanent and shall not be required to be replaced.

(2) A fee of twenty dollars ($20) for each renewal of registration that includes the continued display of the special license plates.

(3) If the special license plates become damaged or unserviceable, a fee of thirty-five dollars ($35) for the replacement of the special license plates, obtained from the department upon proper application therefor.

(4) A fee of fifteen dollars ($15) for the transfer of the special license plates to another vehicle qualifying as a vehicle owned by a firefighter who has met the requirements set forth in subdivision (b).

(5) In addition, for the issuance of environmental license plates, as defined in Section 5103, with the special firefighter personal vehicle license plates and distinctive design or decal, the additional fees prescribed in Sections 5106 and 5108. The additional fees collected pursuant to this paragraph shall be deposited in the California Environmental License Plate Fund.

(e) Upon the death of a person issued special license plates pursuant to this section, the plates shall be transferred to the surviving spouse, if he or she requests, or shall be returned to the department within 60 days after the death of the plateholder or upon the expiration of the vehicle registration, whichever occurs first.

(f) Except as provided in paragraph (5) of subdivision (d), the revenues derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall be deposited in the California Firefighters' Memorial Fund established by Section 18802 of the Revenue and Taxation Code.

SEC. 27. Section 5200 of the Vehicle Code is amended to read:

5200. (a) When two license plates are issued by the department for use upon a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear.

(b) When only one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof, unless the license plate is issued for use upon a truck tractor, in which case the license plate shall be displayed in accordance with Section 4850.5.

SEC. 28. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, and shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the manufacturer for the collection and transportation of garbage, rubbish, or refuse that is used regularly for the collection and transportation of that material by any person or governmental entity employed to collect, transport, and dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) The rear license plate on a two-axle livestock trailer may be mounted 12 inches or more, but not more than 90 inches, from the ground.

(f) No covering may be used on license plates except as follows:

(1) The installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of the cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(2) The installation of a license plate security cover is not a violation of this subdivision if the device does not obstruct or impair the recognition of the license plate information, including, but not limited to, the issuing state, license plate number, and registration tabs, and the cover is limited to the area directly over the top of the registration tabs. No portion of a license plate security cover shall rest over the license plate number.

(g) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code, shall be installed on, or affixed to, a vehicle.

SEC. 29. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the manufacturer for the collection and transportation of garbage, rubbish, or refuse that is used regularly for the collection and transportation of that material by any person or governmental entity employed to collect, transport, and

dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) The rear license plate on a two-axle livestock trailer may be mounted 12 inches or more, but not more than 90 inches, from the ground.

(f) No covering may be used on license plates except as follows:

(1) The installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of the cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(2) The installation of a license plate security cover is not a violation of this subdivision if the device does not obstruct or impair the recognition of the license plate information, including, but not limited to, the issuing state, license plate number, and registration tabs, and the cover is limited to the area directly over the top of the registration tabs. No portion of a license plate security cover shall rest over the license plate number.

(g) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code, shall be installed on, or affixed to, a vehicle.

(h) (1) It is the Legislature's intent that an accommodation be made to persons with disabilities and to those persons who regularly transport persons with disabilities, to allow the removal and relocation of wheelchair lifts and wheelchair carriers without the necessity of removing and reattaching the vehicle's rear license plate. Therefore, it is not a violation of this section if the reading or recognition of a rear license plate is obstructed or impaired by a wheelchair lift or wheelchair carrier and all of the following requirements are met:

(A) The owner of the vehicle has been issued a special identification license plate pursuant to Section 5007 or the person using the wheelchair that is carried on the vehicle has been issued a distinguishing placard under Section 22511.55.

(B) (i) The operator of the vehicle displays a decal, designed and issued by the department, that contains the license plate number assigned to the vehicle transporting the wheelchair.

(ii) The decal is displayed on the rear window of the vehicle, in a location determined by the department, in consultation with the Department of the California Highway Patrol, so as to be clearly visible to law enforcement.

(2) Notwithstanding any other provision of law, if a decal is displayed pursuant to this subdivision, the requirements of this code that require the illumination of the license plate and the license plate number do not apply.

(3) The department shall adopt regulations governing the procedures for accepting and approving applications for decals, and issuing decals, authorized by this subdivision.

(4) This subdivision does not apply to a front license plate.

SEC. 30. Section 6700 of the Vehicle Code is amended to read:

6700. (a) Except as provided in Section 6700.2, the owner of any vehicle of a type otherwise subject to registration under this code, other than a commercial vehicle registered in a foreign jurisdiction, may operate the vehicle in this state until gainful employment is accepted in this state or until residency is established in this state, whichever occurs first, if the vehicle displays valid license plates and has a valid registration issued to the owner, and the owner was a resident of that state at the time of issuance. Application to register the vehicle shall be made within 20 days after gainful employment is accepted in this state or residency is established in this state.

(b) A nonresident owner of a vehicle, otherwise exempt from registration pursuant to this section or Section 6700.2, may operate or permit operation of the vehicle in this state without registering the vehicle in this state if the vehicle is registered in the place of residence of the owner and displays upon it valid license plates issued by that place. This exemption does not apply if the nonresident owner rents, leases, lends, or otherwise furnishes the vehicle to a California resident for regular use on the highways of this state, as defined in subdivision (b) of Section 4000.4.

(c) Any resident who operates upon a highway of this state a vehicle owned by a nonresident who furnished the vehicle to the resident operator for his or her regular use within this state, as defined in subdivision (b) of Section 4000.4, shall cause the vehicle to be registered in California within 20 days after its first operation within this state by the resident.

SEC. 31. Section 9101 of the Vehicle Code is amended to read:

9101. No fees specified in this code, except fees not exempted under Section 9103, need be paid for any vehicle operated by the state, or by any county, city, district, or political subdivision of the state, or the United States, as lessee under a lease, lease-sale, or rental-purchase agreement that grants possession of the vehicle to the lessee for a period of 30 consecutive days or more.

SEC. 32. Section 9107 of the Vehicle Code is amended to read:

9107. The weight fees for commercial vehicles specified in Sections 9400 and 9400.1 do not apply to any of the following:

(a) A vehicle operated by a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, that is subject to the jurisdiction of the Public Utilities Commission, if all of the following conditions are met:

(1) The vehicle is operated exclusively on any line or lines having a one-way route mileage not exceeding 15 miles, and each of those lines is operated in either of the following areas:

(A) In urban or suburban areas or between cities in close proximity.

(B) Between nonadjacent urban or suburban areas or cities, the area between which is substantially residential, commercial, or industrial as distinguished from rural.

(2) The principal business of the passenger stage corporation is the operation of vehicles on a route or routes as defined in paragraph (1).

(b) A vehicle operated exclusively on any line or lines within the limits of a single city by a person engaged as a common carrier of passengers between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(c) Vanpool vehicles.

(d) A vehicle purchased with federal funds under the authority of paragraph (2) of subsection (a) of Section 5310 of Title 49 of the United States Code or Chapter 35 (commencing with Section 3001) of Title 42 of the United States Code for the purpose of providing specialized transportation services to senior citizens and handicapped persons by public and private nonprofit operators of specialized transportation service agencies.

(e) A vehicle operated solely for the purpose of providing specialized transportation services to senior citizens and persons with disabilities, by a nonprofit, public benefit consolidated transportation service agency designated under Section 15975 of the Government Code.

SEC. 33. Section 11204 of the Vehicle Code is amended to read:

11204. (a) The department shall issue a license certificate to each traffic violator school owner and each traffic violator school operator licensed pursuant to this chapter. The term of the license shall be for a period of one year from the date of issue unless canceled, suspended, or revoked by the department. The license shall be renewed annually. The department shall require compliance with Section 11202 for renewal of the license of a traffic violator school owner. The department shall require compliance with Section 11202.5 for renewal of the license of a traffic violator school operator.

(b) (1) In lieu of the examination required by Section 11202.5 for renewal of the license of a traffic violator school operator, the department

may accept submission of evidence by the licensee of continuing professional education.

(2) ''Professional education,'' as used in paragraph (1), means the satisfactory completion of courses acceptable to the department related to traffic safety, teaching techniques, or the teaching of driver instruction, or the participation in professional seminars approved by the department.

(c) Whenever in its judgment the public interest so requires, the department may issue a probationary license subject to special conditions to be observed by the licensee in the conduct of the traffic violator school. The conditions to be attached to the license shall be any that may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein. The conditions may not appear on the license certificate.

(d) Upon notification of the death of a traffic violator school licensee, the department may issue a temporary license to the executor or administrator of the estate of a deceased holder of a validly outstanding license to conduct a traffic violator school, or if no executor or administrator has been appointed and until a certified copy of an order making an appointment is filed with the department, a temporary license may be issued to the surviving spouse or other heir entitled to conduct the business of the deceased. The temporary license shall permit the holder to conduct the traffic violator school for a period of one year from and after the date of the original licensee's death, and necessary one-year extensions may be granted to permit disposal of the business and qualification for a license of a purchaser of the business or the surviving spouse or heir. The department may restrict or condition a temporary license and attach to the exercise of the privilege thereunder any terms and conditions that in the department's judgment are required for the protection of the public.

SEC. 34. Section 11519 is added to the Vehicle Code, to read:

11519. (a) A vehicle that has been reported as a total loss salvage vehicle or dismantled vehicle may not be subsequently registered until there is submitted to the department all of the following:

(1) The prescribed bill of sale.

(2) An appropriate application.

(3) Official lamp and brake adjustment certificates issued by an official lamp and brake adjusting station licensed by the Director of Consumer Affairs, except that a fleet owner of motor trucks of three or more axles that are more than 6,000 pounds unladen weight, and a fleet owner of truck tractors, may instead submit an official lamp and brake certification for his or her rebuilt vehicle if the fleet owner operates an

inspection and maintenance station licensed by the commissioner under subdivision (b) of Section 2525.

(4) With respect to a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a valid certificate of compliance from a licensed motor vehicle pollution control device installation and inspection station indicating that the vehicle is properly equipped with a motor vehicle pollution control device that is in proper operating condition and is in compliance with Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

(5) Any other documents or fees required under law.

(b) The department may not register a vehicle that has been referred to the Department of the California Highway Patrol under subdivision (b) of Section 5505 or that has been selected for inspection by that department under subdivision (c) of that section, until the applicant for registration submits to the department a certification of inspection issued by the Department of the California Highway Patrol and all of the documents required under subdivision (a).

SEC. 35. Section 12814 of the Vehicle Code, as amended by Section 10 of Chapter 985 of the Statutes of 2000, is amended to read:

12814. (a) Application for renewal of a license shall be made at an office of the department by the person to whom the license was issued. The department, in its discretion, may require an examination of the applicant as upon an original application, or an examination deemed by the department to be appropriate considering the licensee's record of convictions and accidents, or an examination deemed by the department to be appropriate in relation to evidence of a condition that may affect the ability of the applicant to safely operate a motor vehicle. The age of a licensee, by itself, may not constitute evidence of a condition requiring an examination of the driving ability. If the department finds any evidence of a condition requiring an examination, the department shall disclose the evidence to the applicant or licensee. If the person is absent from the state at the time the license expires, the director may extend the license for a period of one year from the expiration date of the license.

(b) Renewal of a driver's license shall be under terms and conditions prescribed by the department.

(c) The department may adopt and administer regulations it deems necessary for the public safety in the implementation of a program of selective testing of applicants, and, with reference to this section, the department may waive tests for purposes of evaluation of selective testing procedures.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 36. Section 12814 of the Vehicle Code, as added by Section 11 of Chapter 985 of the Statutes of 2000, is amended to read:

12814. (a) Application for renewal of a license shall be made at an office of the department by the person to whom the license was issued. The department may in its discretion require an examination of the applicant as upon an original application, or an examination deemed by the department to be appropriate considering the licensee's record of convictions and accidents, or an examination deemed by the department to be appropriate in relation to evidence of a condition which may affect the ability of the applicant to safely operate a motor vehicle. The age of a licensee, by itself, may not constitute evidence of a condition requiring an examination of the driving ability. If the department finds any evidence, the department shall disclose the evidence to the applicant or licensee. If the person is absent from the state at the time the license expires, the director may extend the license for a period of one year from the expiration date of the license.

(b) Renewal of a driver's license shall be under terms and conditions prescribed by the department.

(c) The department may adopt and administer those regulations as shall be deemed necessary for the public safety in the implementation of a program of selective testing of applicants, and, with reference to this section, the department may waive tests for purposes of evaluation of selective testing procedures.

(d) This section shall become operative on January 1, 2011.

SEC. 37. Section 13370 of the Vehicle Code is amended to read:

13370. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) Has been convicted, within the two years preceding the application date, of any offense specified in Section 11361.5 of the Health and Safety Code.

(3) Has failed to meet prescribed training requirements for certificate issuance.

(4) Has failed to meet prescribed testing requirements for certificate issuance.

(b) The department may deny, suspend, or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any crime specified in Section 44424 of the Education Code within the seven years preceding the application date. This paragraph does not apply if denial is mandatory.

(2) Has committed any act involving moral turpitude.

(3) Has been convicted of any offense, not specified in this section and other than a sex offense, that is punishable as a felony, within the seven years preceding the application date.

(4) Has been dismissed as a driver for a cause relating to pupil transportation safety.

(5) Has been convicted, within the seven years preceding the application date, of any offense relating to the use, sale, possession, or transportation of narcotics, habit-forming drugs, or dangerous drugs, except as provided in paragraph (3) of subdivision (a).

(c) (1) Reapplication following denial or revocation under paragraph (1), (2), or (3) of subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation.

(2) Reapplication following denial or revocation under paragraph (4) of subdivision (a) may be made after a period of not less than 45 days from the date of the applicant's third testing failure.

(3) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

SEC. 38. Section 15210 of the Vehicle Code is amended to read:

15210. Notwithstanding any other provision of this code, as used in this chapter, the following terms have the following meanings:

(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. 39. Section 15250.7 of the Vehicle Code is amended to read:

15250.7. Upon application for issuance of a duplicate driver's license under subdivision (b) of Section 15250.6, there shall be paid to the department a fee of twenty-seven dollars ($27).

SEC. 40. Section 16000 of the Vehicle Code is amended to read:

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

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

(c) If none of the parties involved in an accident has reported the accident to the department under this section within one year following the date of the accident, the department is not required to file a report on the accident and the driver's license suspension requirements of Section 16004 or 16070 do not apply.

SEC. 41. Section 16021 of the Vehicle Code is amended to read:

16021. Financial responsibility of the driver or owner is established if the driver or owner of the vehicle involved in an accident described in Section 16000 is:

(a) A self-insurer under the provisions of this division.

(b) An insured or obligee under a form of insurance or bond that complies with the requirements of this division and that covers the driver for the vehicle involved in the accident.

(c) The United States of America, this state, any municipality or subdivision thereof, or the lawful agent thereof.

(d) A depositor in compliance with subdivision (a) of Section 16054.2.

(e) An obligee under a policy issued by a charitable risk pool that complies with subdivision (b) of Section 16054.2.

(f) In compliance with the requirements authorized by the department by any other manner which effectuates the purposes of this chapter.

SEC. 42. Section 16370.5 of the Vehicle Code is amended to read:

16370.5. The department shall suspend the privilege of any person to operate a motor vehicle as specified in Section 116.880 of the Code of Civil Procedure. Except as provided in this section, an action brought under Section 116.880 of the Code of Civil Procedure is not governed by Chapter 2 (commencing with Section 16250) of Division 7.

SEC. 43. Section 16431 of the Vehicle Code is amended to read:

16431. (a) Proof of financial responsibility may be given by the written certificate or certificates of any insurance carrier duly authorized to do business within the state, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy as defined in Section 16450, an automobile liability policy as defined in Section 16054, or any other liability policy issued for vehicles with less than four wheels that meets the requirements of Section 16056, which, at the date of the certificate or certificates, is in full force and effect. Except as provided in subdivision (b), the certificate or certificates issued under any liability policy set forth in this section shall be accepted by the department and satisfy the requirements of proof of financial responsibility of this chapter. Nothing in this chapter requires that an insurance carrier certify that there is coverage broader than that provided by the actual policy issued by the carrier.

(b) The department shall require that a person whose driver's license has been revoked, suspended, or restricted under Section 13350, 13351, 13352, 13353, 13353.2, 13353.3, 13353.6, 13353.7, or 16370, provide, as proof of financial responsibility, a certificate or certificates that covers all motor vehicles registered to the person before reinstatement of his or her driver's license.

(c) Subdivision (b) does not apply to vehicles in storage if the current license plates and registration cards are surrendered to the department in Sacramento.

(d) (1) A resident of another state may provide proof of financial responsibility when required to do so under this code from a company authorized to do business in that person's state of residence, if that proof

is satisfactory to the department, covers the operation of a vehicle in this state, and meets the minimum coverage limit requirements specified in Section 16056.

(2) If the person specified in paragraph (1) becomes a resident of this state during the period that the person is required to maintain proof of financial responsibility with the department, the department may not issue or return a driver's license to that person until the person files a written certificate or certificates, as authorized under subdivision (a), that meets the minimum coverage limit requirements specified in Section 16056 and covers the period during which the person is required to maintain proof of financial responsibility.

SEC. 44. Section 24609 of the Vehicle Code is amended to read:

24609. (a) A vehicle may be equipped with white or amber reflectors that are mounted on the front of the vehicle at a height of 15 inches or more, but not more than 60 inches from the ground.

(b) A schoolbus may be equipped with a set of two devices, with each device in the set consisting of an amber reflector integrated into the lens of an amber light that is otherwise permitted under this code, if the set is mounted with one device on the left side and one on the right side of the vehicle, and with each device at the same level.

SEC. 45. Section 27400 of the Vehicle Code is amended to read:

27400. A person operating a motor vehicle or bicycle may not wear a headset covering, or earplugs in, both ears. This prohibition does not apply to any of the following:

(a) A person operating authorized emergency vehicles, as defined in Section 165.

(b) A person engaged in the operation of either special construction equipment or equipment for use in the maintenance of any highway.

(c) A person engaged in the operation of refuse collection equipment who is wearing a safety headset or safety earplugs.

(d) A person wearing personal hearing protectors in the form of earplugs or molds that are specifically designed to attenuate injurious noise levels. The plugs or molds shall be designed in a manner so as to not inhibit the wearer's ability to hear a siren or horn from an emergency vehicle or a horn from another motor vehicle.

(e) A person using a prosthetic device that aids the hard of hearing.

SEC. 46. The Department of Transportation shall extend the completion date for the Bass Lake Trail Environmental Enhancement and Mitigation (EEM) Project in the County of Madera (projection no. EEM 2001 (092)) to June 30, 2006. The sum of two hundred thirty thousand seven hundred twenty dollars ($230,720) is reappropriated from the Mitigation Demonstration Program Fund to the Department of Transportation for expenditure for the purposes of the project.

SEC. 47. The Department of Transportation shall extend the completion date for the Junior Seau Sports Complex Mitigation (EEM) Project in the County of San Diego (projection no. EEM 2001 (015)) to June 30, 2006. The sum of the balance of the project amount is reappropriated from the Mitigation Demonstration Program Fund to the Department of Transportation for expenditure for the purposes of the project.

SEC. 48. Section 29 of this bill incorporates amendments to Section 5201 of the Vehicle Code proposed by both this bill and AB 1303. 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 5201 of the Vehicle Code, and (3) this bill is enacted after AB 1303, in which case Section 28 of this bill shall not become operative.

SEC. 49. 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 595

An act to amend Section 810 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) ''Board,'' as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) ''More than one conviction,'' as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior

to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have ''more than one conviction'' for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 1.5. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) ''Board,'' as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) ''More than one conviction,'' as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have ''more than one conviction'' for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 810 of the Business and Professions Code proposed by this bill, AB 746, and AB 747. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, or both this bill and AB 746 or AB 747 are enacted and become effective on or before

January 1, 2004, (2) each bill amends Section 810 of the Business and Professions Code, and (3) this bill is enacted last, in which case Section 1 of this bill shall not become operative.

CHAPTER 596

An act to add Section 124586 to the Health and Safety Code, relating to health.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 124586 is added to the Health and Safety Code, to read:

124586. (a) Notwithstanding any other provision of law, the department shall, to the extent that funds are available, provide to a grantee under this chapter semiannual prospective payments, as specified in this section, during a 12-month fiscal year.

(b) The first semiannual prospective payment, in an amount equal to not more than 50 percent of the total grant, shall be processed for payment to the grantee following the enactment of the annual Budget Act, and upon formal execution of the grant by the state and shall be contingent upon both of the following:

(1) A written request for payment from the grantee.

(2) The grantee's timely and accurate submission, and the department's approval, of the progress reports required under the grant, budget expenditure report, and annual reconciliation report, from the prior year.

(c) Based upon the grantee's timely and accurate submission of the progress reports and budget expenditure reports from the grant year, and satisfactory performance under the grant, the processing of a second semiannual prospective payment of not more than 40 percent of the total grant shall be processed by the department for payment to a grantee no earlier than January 1 during the term of the grant year. The processing of the grantee's second semiannual prospective payment by the department shall be contingent upon both of the following:

(1) A written request for payment from the grantee.

(2) The grantee's timely and accurate submission, and the department's approval, of progress reports and budget expenditure reports.

(d) Any remaining amount, which shall be at least 10 percent of the total grant award, shall be retained by the department, pending satisfactory submission by the grantee of all progress reports required by the grant, budget expenditure reports, and an annual reconciliation report for the grant year. Payment of the withheld amount shall be processed by the department for payment to the grantee contingent upon both of the following:

(1) A written request for payment from the grantee.

(2) The grantee's timely and accurate submission, and the department's approval, of all progress reports required under the grant, budget expenditure reports from the grant year, the annual reconciliation report for the grant year, and satisfactory performance under the grant.

CHAPTER 597

An act to amend and repeal Section 6368.8 of, and to add Section 6368.9 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 6368.8 of the Revenue and Taxation Code is amended to read:

6368.8. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment, provided all of the following conditions are satisfied:

(1) The qualified equipment is sold or leased by a qualified person.

(2) The qualified person has paid sales tax reimbursement or use tax with respect to the qualified person's purchase or acquisition of the qualified equipment.

(3) The qualified equipment is sold or leased by the qualified person and the qualified equipment is leased back to the qualified person.

(b) For purposes of this section:

(1) ''Qualified person'' means an entity that qualifies as a claimant, as defined in Section 99203 of the Public Utilities Code, eligible to receive allocations under the Transportation Development Act (commencing with Section 99200 of the Public Utilities Code).

(2) ''Qualified equipment'' means a vehicle or vessel and any related equipment used in the provision of public transportation services,

including, but not limited to, bus and van fleets, ferry boats, rail passenger cars, locomotives, other rail vehicles, train control equipment, fare collection equipment, communication systems, global positioning systems, and other systems and accessories related to the operation of a vehicle or vessel used in the provision of public transportation services.

(c) The exemption provided by this section also applies to subsequent purchases of qualified equipment by a qualified person at the end of the term of a lease or sublease of qualified equipment, provided the provisions of paragraphs (1), (2), and (3) of subdivision (a) are met.

(d) The Legislative Analyst, in consultation with the State Board of Equalization and the Franchise Tax Board, shall conduct a study on the impact of the exemption authorized under this section and shall report to the Legislature, by January 1, 2008, on the following:

(1) The number of persons utilizing the exemption.

(2) The fiscal impact of the exemption, including the total exemption amount and any depreciation claimed for qualified equipment.

(3) The impact, if any, of federal law, including, but not limited to, Revenue Ruling 99-14, on the utilization of the exemption.

(4) The impact of the exemption on California's public transit sector.

(5) A recommendation as to whether the exemption should be continued, and if the continuation of exemption is recommended, recommendations on modifications to the existing exemption provisions that should be implemented.

(6) The impact, if any, on the California personal income and corporation taxes, based on the information provided in subdivisions (e) and (f).

(e) No later than five business days after the closing of any transaction executed pursuant to paragraph (3) of subdivision (a), the qualified person shall provide to the Franchise Tax Board, the Legislative Analyst, the Department of Transportation, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation, the following documents:

(1) Copies of the consent letter obtained by the qualified person from the Federal Transit Administration (FTA) within the United States Department of Transportation, authorizing the transaction under FTA Circular 7020.1: Cross-Border Leasing Guidelines.

(2) Copies of the appropriate Internal Revenue Service Form 8264: Application for Registration of a Tax Shelter, that is related to the transaction.

(3) A report describing how the qualified person is using the benefits derived from the lease-leaseback transaction, and, where available, the division between the qualified persons and the purchasers, including equity partners, of the lease or sublease of the qualified equipment.

(f) The Franchise Tax Board, every other year, shall review the information it is provided by qualified persons pursuant to subdivision (e), and, based on the apportionment of income between the qualified persons and the purchasers of the lease or sublease of the qualified equipment, including the equity partners, assess the revenue loss to the state, if there is any. The board shall report its assessment to the Legislative Analyst, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation.

(g) This section shall remain in effect until January 1, 2009, and as of that date is repealed.

SEC. 2. Section 6368.9 is added to the Revenue and Taxation Code, to read:

6368.9. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment purchased by a qualified person at the end of the term of a lease or sublease of qualified equipment pursuant to any exercise of a purchase option under the lease or sublease, provided the following conditions are satisfied:

(1) As of the date the lease or sublease was entered into, the qualified person and qualified equipment were otherwise eligible for exemption under Section 6368.8, as that section read on that same date.

(2) The lease or sublease was entered into before the repeal date of Section 6368.8.

(b) For purposes of this section, ''qualified equipment'' and ''qualified person'' have the same meanings as defined in Section 6368.8, as that section read on the date the lease or sublease was entered into.

(c) This section shall only become operative if Section 6368.8 is repealed and, in that event, shall become operative on the date that section is repealed.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on January 1, 2004.

CHAPTER 598

An act to amend Sections 164.14 and 164.19 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 164.14 of the Streets and Highways Code is amended to read:

164.14. For purposes of Section 164.3, the eligible interregional and intercounty routes include the following:

Route 70, between Route 99 north of Sacramento and Route 395.
Route 74.
Route 78.
Route 79, between Route 8 and Route 10.
Route 80.
Route 84, between Route 580 and Route 4.
Route 86, between Route 111 in Brawley and Route 10.
Route 88.
Route 89.

SEC. 2. Section 164.19 of the Streets and Highways Code is amended to read:

164.19. For purposes of Section 164.3, the eligible interregional and intercounty routes include the following:

Route 203.
Route 205.
Route 207.
Route 215.
Route 239.
Route 243.
Route 267.
Route 299, between Route 101 and Route 89, and between Route 139 and Route 395.

CHAPTER 599

An act to add Chapter 5.5 (commencing with Section 66350) to Part 40 of the Education Code, relating to business ethics.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Chapter 5.5 (commencing with Section 66350) is added to Part 40 of the Education Code, to read:

CHAPTER 5.5. BUSINESS ETHICS

66350. This chapter shall be known and may be cited as the Social Responsibility Business Leadership Initiative Act of 2003.

66351. The Legislature finds and declares all of the following:

(a) Ethics in business are vital to the economic well-being of the state.

(b) Corporate malfeasance is contrary to the long-term economic viability of the state.

(c) California's public and private higher education institutions have the opportunity to act as a catalyst in creating a new generation of elite business leaders that work to create a sustainable, ethical, and socially responsible global community.

(d) It is, therefore, the intent of the Legislature to establish the Social Responsibility Business Leadership Initiative to prepare and inspire California business graduates to apply their business skills to enhance the productivity of the state, and integrate the discipline of corporate responsibility into the general management core.

66352. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall establish and convene a task force to develop a plan for integrating instruction in business ethics into their business and business administration programs. The task force shall report to the Legislature, and advise whether, how, and why this integration can occur. The Regents of the University of California and the Association of Independent California Colleges and Universities are encouraged to join the task force.

66353. (a) The Golden State Business and Social Responsibility Award is hereby established. The award shall honor students who complete graduate business programs at California's public and private institutions of higher education, and show a commitment to socially responsible leadership.

(b) A participating institution of higher education may affix the seal of the Senate, the Assembly, or the Governor on the diploma or transcript of a qualifying student.

(c) A student who meets both of the following requirements shall qualify for an award:

(1) The completion of two ethics courses in business.

(2) The demonstration of a commitment to social responsibility by completing a minimum of 50 hours of community service.

(d) Institutional participation in the Golden State Business and Social Responsibility awards is voluntary. An institution of higher education shall be responsible for any costs it incurs in participating in the award program.

CHAPTER 600

An act to add and repeal Section 42283.6 of the Education Code, relating to the Hot Springs Elementary School District.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 42283.6 is added to the Education Code, to read:

42283.6. (a) Notwithstanding any provision of this article or any other provision of law, Hot Springs Elementary School shall be deemed a necessary small school, as defined in Section 42283. Instead of the amount calculated for necessary small schools, and in addition to the amount per unit of average daily attendance received by the district, as calculated pursuant to Article 2 (commencing with Section 42238), the Hot Springs Elementary School District shall receive in each fiscal year, commencing with the 2003–04 fiscal year, a fifty-thousand-dollar ($50,000) apportionment for Hot Springs Elementary School.

(b) If Hot Springs Elementary School exceeds 28 units of average daily attendance in any fiscal year, that school is no longer entitled to receive the apportionments set forth in subdivision (a).

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Hot Springs Elementary School District. The facts constituting the special circumstances that distinguish it from other school districts are the disproportionate impact that the designation of the Sequoia National Monument has had on the district.

CHAPTER 601

An act to amend Sections 14043.1, 14043.15, 14043.65, 14043.75, 14044, 14123.25, 14124.12, and 14172.5 of, to amend the heading of Article 1.3 (commencing with Section 14043) of Chapter 7 of Part 3 of Division 9 of, and to add Sections 14043.26, 14043.27, 14043.28, 14043.29, 14043.341, 14043.47, 14105.05, and 14170.10 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. The heading of Article 1.3 (commencing with Section 14043) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is amended to read:

Article 1.3. Provider Enrollment, Application, and Participation

SEC. 2. Section 14043.1 of the Welfare and Institutions Code is amended to read:

14043.1. As used in this article:

(a) ''Abuse'' means either of the following:

(1) Practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the federal medicaid and Medicare programs, the Medi-Cal program, another state's medicaid program, or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state.

(2) Practices that are inconsistent with sound medical practices and result in reimbursement by the federal medicaid and Medicare programs, the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

(b) ''Applicant'' means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that applies to the department for enrollment as a provider in the Medi-Cal program.

(c) ''Application or application package'' means a completed and signed application form, signed under penalty of perjury or notarized pursuant to Section 14043.25, a disclosure statement, a provider

agreement, and all attachments or changes in the form, statement, or agreement.

(d) ''Appropriate volume of business'' means a volume that is consistent with the information provided in the application and any supplemental information provided by the applicant or provider, and is of a quality and type that would reasonably be expected based upon the size and type of business operated by the applicant or provider.

(e) ''Business address'' means the location where an applicant or provider provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary. A post office box or commercial box is not a business address. The business address for the location of a vehicle or vessel owned and operated by an applicant or provider enrolled in the Medi-Cal program and used to provide services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary shall either be the business address location for which a separate provider number is issued to the applicant or provider for the provision of similar services or, the applicant or provider's pay-to-address.

(f) ''Convicted'' means any of the following:

(1) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether there is a posttrial motion or an appeal pending or the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(2) A federal, state, or local court has made a finding of guilt against an individual or entity.

(3) A federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity.

(4) An individual or entity has entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld.

(g) ''Debt due and owing'' means 60 days have passed since a notice or demand for repayment of an overpayment or other amount resulting from an audit or examination, for a penalty assessment, or for any other amount due the department was sent to the provider, regardless of whether the provider is an institutional provider or a noninstitutional provider and regardless of whether an appeal is pending.

(h) ''Enrolled or enrollment in the Medi-Cal program'' means authorized under any processes by the department or its agents or contractors to receive, directly or indirectly, reimbursement for the provision of services, goods, supplies, or merchandise to a Medi-Cal beneficiary.

(i) ''Fraud'' means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in

some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(j) ''Location'' means a street, city, or rural route address or a site or place within a street, city, or rural route address, and the city, county, state, and nine digit ZIP Code.

(k) ''Not currently enrolled at the location for which the application is submitted'' means either of the following:

(1) The provider is changing location and moving to a different location than that for which the provider was issued a provider number.

(2) The provider is adding an additional location to that currently used to provide services, goods, supplies, or merchandise to Medi-Cal beneficiaries, and for which the provider was issued a provider number.

(*l*) ''Preenrollment period'' or ''preenrollment'' includes the period of time during which an application package for enrollment, continued enrollment, or for the addition of or change in a location is pending.

(m) ''Professionally recognized standards of health care'' means statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue recognize as applying to those peers practicing or providing care within a state. When the United States Department of Health and Human Services has declared a treatment modality not to be safe and effective, practitioners that employ that treatment modality shall be deemed not to meet professionally recognized standards of health care. This subdivision shall not be construed to mean that all other treatments meet professionally recognized standards of care.

(n) ''Provider'' means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents of any partnership, group association, corporation, institution, or entity, that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary and that has been enrolled in the Medi-Cal program.

(o) ''Unnecessary or substandard items or services'' means those that are either of the following:

(1) Substantially in excess of the provider's usual charges or costs for the items or services.

(2) Furnished, or caused to be furnished, to patients, whether or not covered by Medicare, medicaid, or any of the state health care programs to which the definitions of applicant and provider apply, and which are substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care. The department's determination that the items or services furnished were excessive or of unacceptable quality shall be made on the basis of information, including sanction reports, from the following sources:

(A) The professional review organization for the area served by the individual or entity.

(B) State or local licensing or certification authorities.

(C) Fiscal agents or contractors, or private insurance companies.

(D) State or local professional societies.

(E) Any other sources deemed appropriate by the department.

SEC. 3. Section 14043.15 of the Welfare and Institutions Code is amended to read:

14043.15. (a) The department may adopt regulations for certification of each applicant and each provider in the Medi-Cal program. No certification shall be required for natural persons licensed or certificated under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act.

(b) (1) An applicant or provider who is a natural person, and is licensed or certificated pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or is a professional corporation, as defined in subdivision (b) of Section 13401 of the Corporations Code, shall comply with Section 14043.26 and shall be enrolled in the Medi-Cal program as either an individual provider or as a rendering provider in a provider group for each application package submitted and approved pursuant to Section 14043.26, notwithstanding that the applicant or provider meets the requirements to qualify as exempt from clinic licensure under subdivision (a) or (m) of Section 1206 of the Health and Safety Code.

(2) A provider enrolled in the Medi-Cal program pursuant to paragraph (1), who has disclosed in the application package for enrollment that the provider's practice includes the rendering of services, goods, supplies, or merchandise solely at one, or at more than one, health facility, as defined in Section 1250 of the Health and Safety Code, or clinic, as defined in Section 1204 of the Health and Safety Code, or medical therapy unit, for purposes of Section 123950 of the Health and Safety Code, or residence of the provider's patient, or office of a physician and surgeon involved in the care and treatment of the provider's patients, shall not be required to enroll at each such health facility, clinic, medical therapy unit, patient's residence or physician and surgeon's office location and may utilize the provider number granted upon enrollment pursuant to paragraph (1) to claim reimbursement from the Medi-Cal program for services rendered by the provider to Medi-Cal beneficiaries at all of those health facilities, clinics, medical therapy units, residences, or physician offices.

(3) This subdivision shall not be interpreted to allow the violation of any state or federal law governing fiscal intermediaries or Division 2

(commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act. This subdivision does not remove the requirement that each claim for reimbursement from the Medi-Cal program identify the place of service and the rendering provider.

(c) An applicant or provider licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of, or a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Division 2 of the Health and Safety Code may be enrolled in the Medi-Cal program as a clinic or a health facility and need not comply with Section 14043.26 if the clinic or health facility is certified by the department to participate in the Medi-Cal program.

(d) An applicant or provider that meets the requirements to qualify as exempt from clinic licensure under subdivisions (b) to (*l*), inclusive, or subdivisions (n) to (p), inclusive, of Section 1206 of the Health and Safety Code shall comply with Section 14043.26 and may be enrolled in the Medi-Cal program as either a clinic or within any other provider category for which the applicant or provider qualifies. An applicant or provider to which any of the clinic licensure exemptions specified in this subdivision apply shall identify the licensure exemption category and document in its application package the legal and factual basis for the clinic license exemption claimed.

(e) Notwithstanding subdivisions (a), (b), (c), and (d), an applicant or provider that meets the requirements to qualify as exempt from clinic licensure pursuant to subdivision (h) of Section 1206 of the Health and Safety Code, including an intermittent site that is operated by a licensed primary care clinic or an affiliated mobile health care unit licensed or approved under Chapter 9 (commencing with Section 1765.101) of Division 2 of the Health and Safety Code, and that is operated by a licensed primary care clinic, and for which intermittent site or mobile health unit the licensed primary care clinic directly or indirectly provides all staffing, protocols, equipment, supplies, and billing services, need not enroll in the Medi-Cal program as a separate provider and need not comply with Section 14043.26 if the licensed primary care clinic operating the applicant, provider clinic, or mobile health care unit has notified the department of its separate locations, premises, intermittent sites, or mobile health care units.

SEC. 4. Section 14043.26 is added to the Welfare and Institutions Code, to read:

14043.26. (a) (1) On and after January 1, 2004, an applicant that is not currently enrolled in the Medi-Cal program, or a provider applying for continued enrollment, upon written notification from the department that enrollment for continued participation of all providers in a specific provider of service category or subgroup of that category to which the

provider belongs will occur, or a provider not currently enrolled at a location where the provider intends to provide services, goods, supplies, or merchandise to a Medi-Cal beneficiary, shall submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location or a change in location.

(2) Clinics licensed by the department pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(3) Health facilities licensed by the department pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(4) Adult day health care providers licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(5) Home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(6) Hospices licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(b) Within 30 days after receiving an application package submitted pursuant to subdivision (a), the department shall provide written notice that the application package has been received and, if applicable, that there is a moratorium on the enrollment of providers in the specific provider of service category or subgroup of the category to which the applicant or provider belongs. This moratorium shall bar further processing of the application package.

(c) (1) If the applicant package submitted pursuant to subdivision (a) is from an applicant or provider who meets the criteria listed in paragraph (2), the applicant or provider shall be considered a preferred provider and shall be granted preferred provisional provider status pursuant to this section and for a period of no longer than 18 months, effective from the date on the notice from the department. The ability to request consideration as a preferred provider and the criteria necessary for the consideration shall be publicized to all applicants and providers. An applicant or provider who desires consideration as a preferred provider pursuant to this subdivision shall request consideration from the department by making a notation to that effect on the application package, by cover letter, or by other means identified by the department

in a provider bulletin. Request for consideration as a preferred provider shall be made with each application package submitted in order for the department to grant the consideration. An applicant or provider who requests consideration as a preferred provider shall be notified within 90 days whether the applicant or provider meets or does not meet the criteria listed in paragraph (2). If an applicant or provider is notified that the applicant or provider does not meet the criteria for a preferred provider, the application package submitted shall be processed in accordance with the remainder of this section.

(2) To be considered a preferred provider, the applicant or provider shall meet all of the following criteria:

(A) Hold a current license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of California, which license shall not have been revoked, whether stayed or not, suspended, placed on probation, or subject to other limitation.

(B) Be a current faculty member of a teaching hospital or a children's hospital, as defined in Section 10727, accredited by the Joint Commission for Accreditation of Healthcare Organizations or the American Osteopathic Association, or be credentialed by a health care service plan that is licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code; the Knox-Keene Act) or county organized health system, or be a current member in good standing of a group that is credentialed by a health care service plan that is licensed under the Knox-Keene Act.

(C) Have full, current, unrevoked, and unsuspended privileges at a Joint Commission for Accreditation of Healthcare Organizations or American Osteopathic Association accredited general acute care hospital.

(D) Not have any adverse entries in the Healthcare Integrity and Protection Databank.

(3) The department may recognize other providers as qualifying as preferred providers if criteria similar to those set forth in paragraph (2) are identified for the other providers. The department shall consult with interested parties and appropriate stakeholders to identify similar criteria for other providers so that they may be considered as preferred providers.

(d) Within 180 days after receiving an application package submitted pursuant to subdivision (a), or from the date of the notice to an applicant or provider that the applicant or provider does not qualify as a preferred provider under subdivision (c), the department shall give written notice to the applicant or provider that any of the following applies, or shall on the 181st day grant the applicant or provider provisional provider status pursuant to this section for a period no longer than 12 months, effective from the 181st day:

(1) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(2) The application package is incomplete. The notice shall identify any additional information or documentation that is needed to complete the application package.

(3) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7, and is conducting background checks, preenrollment inspections, or unannounced visits.

(4) The application package is denied for any of the following reasons:

(A) Pursuant to Section 14043.2 or 14043.36.

(B) For lack of a license necessary to perform the health care services or to provide the goods, supplies, or merchandise directly or indirectly to a Medi-Cal beneficiary, within the applicable provider of service category or subgroup of that category.

(C) The period of time during which an applicant or provider has been barred from reapplying has not passed.

(D) For other stated reasons authorized by law.

(e) (1) If the application package that was noticed as incomplete under subdivision (d) is resubmitted with all requested information and documentation, and received by the department within 35 days of the date on the notice, the department shall, within 60 days of the resubmission, send a notice that any of the following applies:

(A) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) The application package is denied for any other reasons provided for in paragraph (4) of subdivision (d).

(C) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits.

(2) (A) If the application package that was noticed as incomplete under paragraph (2) of subdivision (d) is not resubmitted with all requested information and documentation and received by the department within 35 days of the date on the notice, the application package shall be denied by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to resubmit is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(C) Notwithstanding subparagraph (A), if the notice of an incomplete application package included a request for information or documentation related to grounds for denial under Section 14043.2 or

14043.36, the applicant or provider may not reapply for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of three years.

(f) (1) If the department exercises its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits, the applicant or provider shall receive notice, from the department, after the conclusion of the background check, preenrollment inspections, or unannounced visit of either of the following:

(A) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) Discrepancies or failure to meet program requirements, as prescribed by the department, have been found to exist during the preenrollment period.

(2) (A) The notice shall identify the discrepancies or failures, and whether remediation can be made or not, and if so, the time period within which remediation must be accomplished. Failure to remediate discrepancies and failures as prescribed by the department, or notification that remediation is not available, shall result in denial of the application by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to remediate is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(C) Notwithstanding subparagraph (A), if the discrepancies or failure to meet program requirements, as prescribed by the director, included in the notice were related to grounds for denial under Section 14043.2 or 14043.36, the applicant or provider may not reapply for three years.

(g) If provisional provider status or preferred provisional provider status is granted pursuant to this section, a separate provider number shall be issued for each location for which an application package has been approved. This separate provider number shall be used exclusively for the location for which it is issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the provider's business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

(h) Except for providers subject to subdivision (c) of Section 14043.47, a provider currently enrolled in the Medi-Cal program at one

or more locations who has submitted an application package for enrollment at a new location or a change in location pursuant to subdivision (a) may continue to submit claims under an existing provider number for services rendered at the new location until the application package is approved or denied under this section, and shall not be subject, during that period, to deactivation of the provider's provider number, or be subject to any delay or nonpayment of claims as a result of the use of the existing provider number for services rendered at the new location as herein authorized. However, the provider shall be considered during that period to have been granted provisional provider status or preferred provisional provider status and be subject to termination of that status pursuant to Section 14043.27. A provider that is subject to subdivision (c) of Section 14043.47 may come within the scope of this subdivision upon submitting documentation in the application package that identifies the physician providing supervision for every three locations.

(i) An applicant or a provider whose application for enrollment, continued enrollment, or a new location or change in location has been denied pursuant to this section, may appeal the denial in accordance with Section 14043.65.

SEC. 5. Section 14043.27 is added to the Welfare and Institutions Code, to read:

14043.27. (a) If an applicant or provider is granted provisional provider status or preferred provisional provider status pursuant to Section 14043.26 and, if at any time during the provisional provider status period or preferred provisional provider status period, the department conducts any announced or unannounced visits or any additional inspections or reviews pursuant to this chapter or Chapter 8 (commencing with Section 14200), or the regulations adopted thereunder, or pursuant to Section 100185.5 of the Health and Safety Code, and discovers or otherwise determines the existence of any ground to deactivate the provider number or suspend the provider from the Medi-Cal program pursuant to this chapter or Chapter 8 (commencing with Section 14200), or the regulations adopted thereunder, or pursuant to Section 100185.5 of the Health and Safety Code, or if any of the circumstances listed in subdivision (c) occur, the department shall terminate the provisional provider status or preferred provisional provider status of the provider, regardless of whether the period of time for which the provisional provider status or preferred provisional provider status was granted under Section 14043.26 has elapsed.

(b) Termination of provisional provider status or preferred provisional provider status shall include deactivation of all provider numbers used by the provider at any location to obtain reimbursement from the Medi-Cal program and removal of the provider from

enrollment in the Medi-Cal program, except where the termination is based upon a ground related solely to a specific location for which provisional provider status was granted. Termination of provisional provider status based upon grounds related solely to a specific location may include failure to have an established place of business, failure to possess the business or zoning permits or other approvals necessary to operate a business, or failure to possess the appropriate licenses, permits, or certificates necessary for the provider of service category or subcategory identified by the provider in its application package. Where the grounds relate solely to a specific location, the termination of provisional provider status shall include only deactivation of the provider numbers issued for the specific locations that the grounds apply to and shall include removal of the provider from enrollment in the Medi-Cal program only if, after deactivation of the provider numbers, the provider does not possess any valid provider numbers.

(c) The following circumstances are grounds for termination of provisional provider status or preferred provisional provider status:

(1) The provider, persons with an ownership or control interest in the provider, or persons who are directors, officers, or managing employees of the provider have been convicted of any felony, or convicted of any misdemeanor involving fraud or abuse in any government program, related to neglect or abuse of a patient in connection with the delivery of a health care item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or have been found liable for fraud or abuse in any civil proceeding, or have entered into a settlement in lieu of conviction for fraud or abuse in any government program within 10 years of the date of the application package.

(2) There is a material discrepancy in the information provided to the department, or with the requirements to be enrolled, that is discovered after provisional provider status or preferred provisional provider status has been granted and that cannot be corrected because the discrepancy occurred in the past.

(3) The provider has provided material information that was false or misleading at the time it was provided.

(4) The provider failed to have an established place of business at the business address for which the application package was submitted at the time of any onsite inspection, announced or unannounced visit, or any additional inspection or review conducted pursuant to this article or a statute or regulation governing the Medi-Cal program, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods,

supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

(5) The provider meets the definition of a clinic under Section 1200 of the Health and Safety Code, but is not licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and fails to meet the requirements to qualify for at least one exemption pursuant to Section 1206 or 1206.1 of the Health and Safety Code.

(6) The provider performs clinical laboratory tests or examinations, but it or its personnel do not meet CLIA, and the regulations adopted thereunder, and the state clinical laboratory law, do not possess valid CLIA certificates and clinical laboratory registrations or licenses pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code, or are not exempt from licensure as a clinical laboratory under Section 1241 of the Business and Professions Code.

(7) The provider fails to possess either of the following:

(A) The appropriate licenses, permits, certificates, or other approvals needed to practice the profession or occupation, or provide the services, goods, supplies, or merchandise the provider identified in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted and for the location for which the application was submitted.

(B) The business or zoning permits or other approvals necessary to operate a business at the location identified in its application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

(8) The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in that organization, commits two or more violations of the federal or state statutes or regulations governing the Medi-Cal program, and the violations demonstrate a pattern or practice of fraud, abuse, or provision of unnecessary or substandard medical services.

(9) The provider commits any violation of a federal or state statute or regulation governing the Medi-Cal program or of a statute or regulation governing the provider's profession or occupation and the violation represents a threat of immediate jeopardy or significant harm to any Medi-Cal beneficiary or to the public welfare.

(10) The provider submits claims for payment that subject a provider to suspension under Section 14043.61.

(11) The provider submits claims for payment for services, goods, supplies, or merchandise rendered at a location other than the location

for which the provider number was issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status was granted.

(12) The provider has not paid its fine, or has a debt due and owing, including overpayments and penalty assessments, to any federal, state, or local government entity that relates to Medicare, medicaid, Medi-Cal, or any other federal or state health care program, and has not made satisfactory arrangements to fulfill the obligation or otherwise been excused by legal process from fulfilling the obligation.

(d) If, during a provisional provider status period or a preferred provisional provider status period, the department conducts any announced or unannounced visits or any additional inspections or reviews pursuant to this chapter or Chapter 8 (commencing with Section 14200), or the regulations adopted thereunder, and commences an investigation for fraud or abuse, or discovers or otherwise determines that the provider is under investigation for fraud or abuse by any other state, local, or federal government law enforcement agency, the provider shall be subject to termination of provisional provider status or preferred provisional provider status, regardless of whether the period of time for which the provisional provider status or preferred provisional provider status was granted under Section 14043.26 has elapsed.

(e) A provider whose provisional provider status or preferred provisional provider status has been terminated pursuant to this section may appeal the termination in accordance with Section 14043.65.

(f) Any department-recovered fine or debt due and owing, including overpayments, that are subsequently determined to have been erroneously collected shall be promptly refunded to the provider, together with interest paid in accordance with subdivision (e) of Section 14171 and Section 14172.5.

SEC. 6. Section 14043.28 is added to the Welfare and Institutions Code, to read:

14043.28. (a) (1) If an application package is denied under Section 14043.26 or provisional provider status or preferred provisional provider status is terminated under Section 14043.27, the applicant or provider may not reapply for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of three years from the date the application package is denied or the provisional provider status is terminated, or from the date of the final decision following an appeal from that denial or termination, except as

provided otherwise in paragraph (2) of subdivision (e), or paragraph (2) of subdivision (f), of Section 14043.26 and as set forth in this section.

(2) If the application is denied under paragraph (2) of subdivision (e) of Section 14043.26 because the applicant failed to resubmit an incomplete application package or is denied under paragraph (2) of subdivision (f) of Section 14043.26 because the applicant failed to remediate discrepancies, the applicant may resubmit an application in accordance with paragraph (2) of subdivision (d) or paragraph (2) of subdivision (f), respectively.

(3) If the denial of the application package is based upon a conviction for any offense or for any act included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon a conviction for any offense or for any act included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider may not reapply for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of 10 years from the date the application package is denied or the provisional provider status or preferred provisional provider status is terminated or from the date of the final decision following an appeal from that denial or termination.

(4) If the denial of the application package is based upon two or more convictions for any offense or for any two or more acts included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon two or more convictions for any offense or for any two acts included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider shall be permanently barred from enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors.

(5) The prohibition in paragraph (1) against reapplying for three years shall not apply if the denial of the application or termination of provisional provider status or preferred provisional provider status is based upon any of the following:

(A) The grounds provided for in paragraph (4), or subparagraph (B) of paragraph (7), of subdivision (c) of Section 14043.27.

(B) The grounds provided for in subdivision (d) of Section 14043.27, if the investigation is closed without any adverse action being taken.

(C) The grounds provided for in paragraph (6) of subdivision (c) of Section 14043.27. However, the department may deny reimbursement for claims submitted while the provider was noncompliant with CLIA.

(b) (1) If an application package is denied under subparagraph (A), (B), or (D) of paragraph (4) of subdivision (d) of Section 14043.26, or with respect to a provider described in subparagraph (B) of paragraph (2)

of subdivision (e), or subparagraph (B) of paragraph (2) of subdivision (f), of Section 14043.26, or provisional provider status or preferred provisional provider status is terminated based upon any of the grounds stated in subparagraph (A) of paragraph (7), or paragraphs (1), (2), (3), (5), and (8) to (12), inclusive, of subdivision (c) of Section 14043.27, all existing provider numbers assigned to the applicant or provider shall be deactivated and the applicant or provider shall be removed from enrollment in the Medi-Cal program by operation of law.

(2) If the termination of provisional provider status is based upon the grounds stated in subdivision (d) of Section 14043.27 and the investigation is closed without any adverse action being taken, or is based upon the grounds in subparagraph (B) of paragraph (7) of subdivision (c) of Section 14043.27 and the applicant or provider obtains the appropriate license, permits, or approvals covering the period of provisional provider status, the termination taken pursuant to subdivision (c) of Section 14043.27 shall be rescinded, the previously deactivated provider numbers shall be reactivated, and the provider shall be reenrolled in the Medi-Cal program, unless there are other grounds for taking these actions.

(c) Claims that are submitted or caused to be submitted by an applicant or provider who has been suspended from the Medi-Cal program for any reason or who has had its provisional provider status terminated or had its application package for enrollment or continued enrollment denied and all provider numbers deactivated may not be paid for services, goods, merchandise, or supplies rendered to Medi-Cal beneficiaries during the period of suspension or termination or after the date all provider numbers are deactivated.

SEC. 7. Section 14043.29 is added to the Welfare and Institutions Code, to read:

14043.29. (a) If, at the end of the period for which provisional provider status or preferred provisional provider status was granted under Section 14043.26, all of the following conditions are met, the provisional status shall cease and the provider shall be enrolled in the Medi-Cal program without designation as a provisional provider:

(1) The provider has demonstrated an appropriate volume of business.

(2) The provisional provider status or preferred provisional provider status has not been terminated or if it has been terminated, the act of termination was rescinded.

(3) The provider continues to meet the standards for enrollment in the Medi-Cal program as set forth in this article and Section 51000 and following of Title 22 of the California Code of Regulations.

(b) (1) An applicant or a provider who applied for enrollment or continued enrollment in the Medi-Cal program, prior to May 1, 2003,

and for whom the application has not been approved or denied, or who has not received a notice on or before January 1, 2004, that the department is exercising its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits, shall be granted provisional provider status effective on January 1, 2004. Applications from applicants or providers who have been so noticed prior to January 1, 2004, shall be processed in accordance with subdivision (e) of Section 14043.26.

(2) Applications from applicants or providers that have been received by the department after May 1, 2003, but prior to January 1, 2004, shall be processed in accordance with Section 14043.26, except that these application packages shall be deemed to have been received by the department on January 1, 2004.

SEC. 8. Section 14043.341 is added to the Welfare and Institutions Code, to read:

14043.341. (a) Each provider that dispenses, as defined in Section 4024 of the Business and Professions Code, or that furnishes, as defined in Section 4026 of the Business and Professions Code, a controlled drug, a dangerous drug, or a dangerous device to a Medi-Cal beneficiary, or a drug or device requiring a written order or prescription for the drug or device to be covered under the Medi-Cal program, or who obtains a biological specimen from a Medi-Cal beneficiary for the performance of a clinical laboratory test or examination shall maintain a record of the signature of the person receiving the drug or device or from whom a biological specimen was obtained; the printed name of the recipient or person from whom the biological specimen was obtained; the date signed; for a drug or device, the prescription number or a description of the item or items dispensed or furnished; and if the recipient is not the beneficiary for whom the drug or device was ordered or prescribed or from whom a biological specimen was obtained, a notation of the recipient's relationship to that beneficiary. The signature and printed name of the person from whom a biological specimen is obtained on the requisition provided to the clinical laboratory for performance of the test or examination for which the specimen was obtained shall be sufficient to comply with this section if a copy of the signed requisition is kept by the provider obtaining the biological specimen. Furthermore, no signature is required under this section where the biological specimen is obtained for the purpose of anatomical pathology examinations performed during the inpatient or outpatient surgery if a notation of the performance of the anatomical pathology examination appears in the medical record.

(b) For purposes of this section:

(1) ''Biological specimen'' shall have the same meaning as in Section 1206 of the Business and Professions Code.

(2) ''Clinical laboratory test or examination'' shall have the same meaning as in Section 1206 of the Business and Professions Code.

(3) ''Controlled substance'' shall mean any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(4) ''Dangerous drug'' or ''dangerous device'' has the same meaning as in Section 4022 of the Business and Professions Code.

(5) ''Drug or device'' means:

(A) ''Drug,'' as defined in Section 4025 of the Business and Professions Code.

(B) ''Device,'' as defined in Section 4023 of the Business and Professions Code.

(C) Pharmaceuticals, medical equipment, medical supplies, orthotics and prosthetics appliances, and other product-like supplies or equipment.

(c) Nothing in this section shall require a provider who dispenses or furnishes a complimentary sample of a dangerous drug to maintain the signature of the person receiving that drug, provided no charge is made to the patient, and an appropriate record is entered in the patient's chart.

(d) If the dispensing or furnishing of a drug or device occurs on a periodic basis within an established provider-patient relationship, the signature shall only be required upon the initial dispensing or furnishing of the drug, so long as an appropriate record of each dispensing or furnishing is entered in the patient's chart.

(e) If the obtaining of a biological specimen is required in order that a test or examination occur on a periodic basis within an established provider-patient relationship, the signature shall only be required upon obtaining the biological specimen necessary for the initial test or examination so long as an appropriate record of each test or examination is entered in the patient's chart.

(f) The requirement of this section to obtain a signature shall not apply to a licensed pharmacy or clinical laboratory that is owned and operated by a nonprofit health care service plan that has at least 3,500,000 enrollees or that is owned and operated by a nonprofit hospital corporation that has a mutually exclusive contract with a nonprofit health care service plan that has at least 3,500,000 enrollees, or to a licensed provider who practices within a physician organization that meets either of the requirements set forth in paragraph (2) of subdivision (g) of Section 1375.4 of the Health and Safety Code.

SEC. 9. Section 14043.47 is added to the Welfare and Institutions Code, to read:

14043.47. (a) A provider doing business as a sole proprietorship, partnership, or professional corporation under Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code or a rendering

physician provider in a group who utilizes nonphysician medical practitioners to provide services, goods, supplies, or merchandise to Medi-Cal beneficiaries shall meet the specific supervisory requirements applicable to such providers, pursuant to the Business and Professions Code or other state or federal law.

(b) A provider doing business as a sole proprietorship, partnership, or professional corporation under Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code or a rendering physician provider in a group who fails to comply with the requirements of this section is subject to temporary suspension from the Medi-Cal program and deactivation of all provider numbers.

(c) A physician doing business as a sole proprietorship, partnership, or professional corporation under Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code or a rendering physician provider in a group may not be enrolled at more than three business addresses unless there is a ratio of at least one physician providing supervision for every three locations.

(d) A physician doing business as a sole proprietorship, partnership, or professional medical corporation under Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code or a rendering physician provider in a group who fails to comply with the requirements of this section is subject to temporary suspension from the Medi-Cal program and deactivation of all of his or her provider numbers.

SEC. 10. Section 14043.65 of the Welfare and Institutions Code is amended to read:

14043.65. (a) Notwithstanding any other provision of law, any applicant whose application for enrollment as a provider or whose certification is denied; or any provider who is denied continued enrollment or certification, or denied enrollment for a new location, who has been temporarily suspended, who has had payments withheld, who has had one or more provider numbers used to obtain reimbursement from the Medi-Cal program deactivated, or whose provisional provider status or preferred provisional provider status has been terminated pursuant to this article or Section 14107.11, or Section 100185.5 of the Health and Safety Code, or who has had a civil penalty imposed pursuant to subdivision (a) of Section 14123.25; or any billing agent, as defined in Section 14040, when the billing agent's registration has been denied pursuant to subdivision (e) of Section 14040.5, may appeal this action by submitting a written appeal, including any supporting evidence, to the director or the director's designee. Where the appeal is of a withholding of payment pursuant to Section 14107.11, the appeal to the director or the director's designee shall be limited to the issue of the reliability of the evidence supporting the withhold and shall not encompass fraud or abuse. The appeal procedure shall not include a

formal administrative hearing under the Administrative Procedure Act and shall not result in reactivation of any deactivated provider numbers during appeal. An applicant, provider, or billing agent that files an appeal pursuant to this section shall submit the written appeal along with all pertinent documents and all other relevant evidence to the director or to the director's designee within 60 days of the date of notification of the department's action. The director or the director's designee shall review all of the relevant materials submitted and shall issue a decision within 90 days of the receipt of the appeal. The decision may provide that the action taken should be upheld, continued, or reversed, in whole or in part. The decision of the director or the director's designee shall be final. Any further appeal shall be required to be filed in accordance with Section 1085 of the Code of Civil Procedure.

(b) No applicant whose application for enrollment as a provider has been denied pursuant to Section 14043.2, 14043.36, or 14043.4 may reapply for a period of three years from the date the application is denied. If the provider has appealed the denial, the three-year period shall commence upon the date of final action by the director or the director's designee.

SEC. 11. Section 14043.75 of the Welfare and Institutions Code is amended to read:

14043.75. (a) The director may, in consultation with interested parties, by regulation, adopt, readopt, repeal, or amend additional measures to prevent or curtail fraud and abuse. Regulations adopted, readopted, repealed, or amended pursuant to this section shall be deemed emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). These emergency regulations shall be deemed necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted, amended, or repealed pursuant to this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(b) Notwithstanding any other provision of law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific Sections 14043.15, 14043.26, 14043.27, 14043.28, 14043.29, and 14043.341 by means of a provider bulletin or similar instruction. The department shall notify and consult with interested parties and appropriate stakeholders in implementing, interpreting, or making specific those provisions described in this subdivision, including all of the following:

(1) Notifying provider representatives of the proposed action or change. The notice shall occur at least 10 business days prior to the meeting provided for in paragraph (2).

(2) Scheduling at least one meeting with interested parties and appropriate stakeholders to discuss the action or change.

(3) Allowing for written input regarding the action or change.

(4) Providing at least 30 days advance notice of the effective date of the action or change.

SEC. 12. Section 14044 of the Welfare and Institutions Code is amended 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 substantially in excess of what the department reasonably expects from the provider, based on data regarding the provider or other providers in the health care community who provide substantially similar services to a substantially similar patient population, that is 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. 13. Section 14105.05 is added to the Welfare and Institutions Code, to read:

14105.05. (a) Notwithstanding Section 14105, and any other provision of law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, take one or both of the following actions:

(1) Establish the reimbursement rates necessitated by the establishment of updated coding systems required for compliance by the federal Health Insurance Portability and Accountability Act (HIPAA).

(2) Adopt and annually update the federal Healthcare Common Procedure Coding System codes (formerly known as the United States Healthcare Common Procedure Coding System HCPCS) or any other coding system required for compliance with this chapter, federal medicaid requirements, or the federal Health Insurance Portability and Accountability Act (HIPAA).

(b) The director may take the actions described in subdivision (a) by means of publication in the California Regulatory Notice Register, the Medi-Cal Provider Manual, or similar publications.

(c) The publication of reimbursement rates or coding systems pursuant to subdivision (a) shall include an effective date for the published rates or coding systems.

(d) Nothing in this section shall be construed to affect the department's compliance with federal medicaid law or regulations relating to the adoption of Medi-Cal reimbursement rates.

SEC. 14. Section 14123.25 of the Welfare and Institutions Code is amended to read:

14123.25. (a) In lieu of, or in addition to, the imposition of any other sanction available to it, including the sanctions and penalties authorized under Section 14123.2 or 14171.6, and as the ''single state agency'' for California vested with authority to administer the Medi-Cal program, the department shall exercise the authority granted to it in Section 1002.2 of Title 42 of the Code of Federal Regulations, and may also impose the mandatory and permissive exclusions identified in Section 1128 of the federal Social Security Act (42 U.S.C. Sec. 1320a-7), and its implementing regulations, and impose civil penalties identified in Section 1128A of the federal Social Security Act (42 U.S.C. Sec. 1320a-7a), and its implementing regulations, against applicants and providers, as defined in Section 14043.1 or against billing agents, as defined in Section 14040.1. The department may also terminate, or refuse to enter into, a provider agreement authorized under Section 14043.2 with an applicant or provider, as defined in Section 14043.1, upon the grounds specified in Section 1866(b)(2) of the federal Social Security Act (42 U.S.C. Sec. 1395cc(b)(2). Notwithstanding Section 100171 of the Health and Safety Code or any other provision of law, any appeal by an applicant, provider, or billing agent of the imposition of a civil penalty, exclusion, or other sanction pursuant to this subdivision shall be in accordance with Section 14043.65, except that where the action is based upon conviction for any crime involving fraud or abuse of the Medi-Cal, medicaid, or Medicare programs, or exclusion by the federal government from the medicaid or Medicare programs the action shall be automatic and not subject to appeal or hearing.

(b) In addition, the department may impose the intermediate sanctions identified in Section 1846 of the Social Security Act (42 U.S.C. Sec. 1395w-2), and its implementing regulations, against any provider that is a clinical laboratory, as defined in Section 1206 of the Business and Professions Code. The imposition and appeal of this intermediate sanction shall be in accordance with Article 8 (commencing with Section 1065) of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations.

(c) (1) In addition, the department may issue a written warning notice of improper billing or improper cost report computation, which shall specifically identify the statute, regulation, or rule that is being

violated, to a provider via certified mail, return receipt requested whenever a review of the provider's paid claims or a provider's cost report demonstrate a pattern of improper billing or improper cost report computation. The review shall not take into account claims that were denied, or payment reductions. The warning notice shall be in a format that specifically apprises the provider of the item or service improperly billed, and if applicable, the deficiencies in the manner in which provider costs were computed. The warning notice may be issued with annual cost report audit findings, or in addition to any audit or any other action that the department is authorized to take. The failure of the department to exercise its discretion to issue the warning notice shall not be interpreted and shall not limit its authority to audit or take any action authorized by law. The warning notice shall provide the provider with the opportunity to contest the warning notice and explain to the department the correctness of the provider's bill or cost report computation. If the department accepts the provider's explanation, in whole or in part, no further action related to the notice or part of the notice that the department accepts as correct shall be taken pursuant to this section.

(2) Civil money penalties may be imposed in the following circumstances:

(A) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are:

(i) Billed improperly, and are for a service or item about which the provider has received two or more warning notices of improper billing, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars ($100) per claim, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, the cost reports relevant to the claims are improperly calculated, and the provider has received two or more warning notices of improper cost report computation regarding substantially similar errors, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars ($100) per adjustment by the department to the costs submitted by the provider, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(B) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are:

(i) Billed improperly, and are for a service or item about which the provider has received three or more warning notices of improper billing,

or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars ($1,000) per claim, or up to three times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, and the cost reports relevant to the claims are improperly calculated, and the provider has received three or more warning notices of improper cost report computation regarding substantially similar errors, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars ($1,000) per adjustment by the department to the costs submitted by the provider, or three times the amount claimed for each item or service, whichever is greater.

(3) Any provider subjected to civil money penalties under paragraph (2) may appeal the decision to assess penalties pursuant to Section 100171 of the Health and Safety Code.

SEC. 15. Section 14124.12 of the Welfare and Institutions Code is amended to read:

14124.12. (a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

(b) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners of California, shall work in conjunction with the State Department of Health Services to provide all information that is necessary to implement this section. These boards and the department shall annually report to the Legislature

by no later than March 1 that number of licensees of these boards, placed on probation during the immediately preceding calendar year, who are:

(1) Not receiving Medi-Cal reimbursement for certain surgical services or invasive procedures, including dental surgeries or invasive procedures, as a result of subdivision (a).

(2) Continuing to receive Medi-Cal reimbursement for certain surgical or invasive procedures, including dental surgeries or invasive procedures, as a result of a determination of compelling circumstances made in accordance with subdivision (a).

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 16. Section 14170.10 is added to the Welfare and Institutions Code, to read:

14170.10. (a) No provider shall submit a claim to the department or its fiscal intermediaries for the dispensing or furnishing of a controlled drug, a dangerous drug, or a dangerous device, or a drug or device requiring a written order or prescription for the drug or device to be covered under the Medi-Cal program or for the performance of a clinical laboratory test or examination, unless the provider's records contain an order authorized by Section 4019 of the Business and Professions Code, or a prescription, including an electronic transmission prescription, signed by the person lawfully authorized by his or her practice act to prescribe or order the dispensing or furnishing of that drug or device to, or for the performance of a clinical laboratory test or examination that meets the federal CLIA standard for test requisition as set forth in Section 493.1241 of Title 42 of the Code of Federal Regulations upon, a Medi-Cal beneficiary, except the following:

(1) Providers who are physicians, clinics, hospitals, or other nonpharmacists and who are legally authorized to dispense or furnish drugs or devices directly to their patients, may in lieu of the requirements of this subdivision include a notation in their patients' medical charts reflecting they have dispensed or furnished the drug or device directly to the patient as authorized by the Business and Professions Code.

(2) Anatomical pathology examinations may be ordered by physicians by notation within the patients medical record during inpatient or outpatient surgery provided that these examinations comply with federal CLIA requirements. Any claims made contrary to this section shall be subject to recovery as overpayments.

(3) If obtaining a biological specimen is required in order that a test or examination occurs on a periodic basis within an established provider-patient relationship or the furnishing or dispensing of drugs or devices occurs on a periodic basis within an established provider-patient

relationship, the provider shall only be required to retain the order or requisition upon obtaining the biological specimen necessary for the initial test or examination or initial furnishing or dispensing of the drug or device, so long as an appropriate record of each test or examination, or furnishing or dispensing, is entered in the patient's chart.

(b) For purposes of this section:

(1) ''Signed'' shall include a signature that meets the conditions of the Electronic Signature in Global and National Commerce Act (15 U.S.C. Sec. 7001).

(2) ''Controlled substance'' shall mean any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(3) ''Dangerous drug'' or ''dangerous device'' has the same meaning as in Section 4022 of the Business and Professions Code.

(4) ''Drug or device'' means:

(A) ''Drug,'' as defined in Section 4025 of the Business and Professions Code.

(B) ''Device,'' as defined in Section 4023 of the Business and Professions Code.

(C) Pharmaceuticals, medical equipment, medical supplies, orthotics and prosthetics appliances, and other product-like supplies or equipment.

(5) ''Prescription'' has the same meaning as in Section 4040 of the Business and Professions Code.

(6) ''Electronic transmission prescription'' includes both image and data prescriptions.

(7) ''Electronic image transmission prescription'' means any prescription order for which a facsimile of the order is received by a pharmacy or other appropriate provider from a licensed prescriber and that is reduced to writing and processed by the pharmacy or other appropriate provider in accordance with applicable provisions of the Business and Professions Code, including Section 4070.

(8) ''Electronic data transmission prescription'' means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy or other appropriate provider and which is reduced to writing and processed by the pharmacy or other appropriate provider in accordance with applicable provisions of the Business and Professions Code, including Section 4070. The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(9) ''Clinical laboratory test or examination'' means the detection, identification, measurement, evaluation, correlation, monitoring, and reporting of any particular analyte, entity, or substance within a biological specimen for the purpose of obtaining scientific data that may

be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being, or for the performance of nondiagnostic tests for assessing the health of an individual.

(c) Notwithstanding any other provision of law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of a provider bulletin or similar instruction. The department shall notify and consult with interested parties and appropriate stakeholders in implementing, interpreting, or making specific the provisions of this section, including all of the following:

(1) Notifying provider representatives of the proposed action or change. The notice shall occur at least 10 business days prior to the meeting provided for in paragraph (2).

(2) Scheduling at least one meeting with interested parties and appropriate stakeholders to discuss the action or change.

(3) Allowing for written input regarding the action or change.

(4) Providing at least 30 days' advance notice on the effective date of the action or change.

SEC. 17. Section 14172.5 of the Welfare and Institutions Code is amended to read:

14172.5. (a) No later than 60 days after the completion of an audit or examination pursuant to Sections 10722 and 14170, the department shall issue the first statement of account status or demand for repayment.

(b) (1) Notwithstanding the provisions of Section 14172 or any other law, when it is established that an overpayment has been made to a provider or a civil money penalty assessed pursuant to Section 14123.2, 14123.25, 14171.5, or 14171.6 is due from a provider, the department shall not begin liquidation of the overpayment until 60 days after issuance of the first statement of accountability or demand for repayment after issuance of the audit or examination report establishing the overpayment or the document establishing the penalty. The department shall pursue liquidation of the overpayment or penalty upon expiration of the 60-day period. If the department finds, upon appeal, that no overpayment was made to, or no penalty is due from, the provider, the department shall repay the amount collected, together with the payment of interest thereon, from the date occurring 60 days after issuance of the first statement of accountability or demand for repayment after issuance of the audit or examination report alleging the overpayment or the document establishing the penalty.

(2) This subdivision shall not be construed so as to affect the department's authority under other provisions of law for liquidation of overpayments to providers.

(c) Liquidation of the overpayment or penalty may be by any of the following:

(1) Lump-sum payment by the provider.

(2) Offset against current payments due to the provider.

(3) A repayment agreement executed between the provider and the department.

(4) Any other method of recovery available to and deemed appropriate by the director.

(d) An offset against current payments shall continue until one of the following occurs:

(1) The overpayment or penalty is recovered.

(2) The department enters into an agreement with the provider for repayment of the overpayment or penalty.

(3) The department determines, upon appeal, that there is no overpayment or that the penalty should not have been assessed.

(e) The provider shall pay interest on any unrecovered overpayments or penalty assessments as provided by subdivision (h) of Section 14171. If recovery of a disallowed payment has been made by the department, a provider who prevails in an appeal of a disallowed payment or penalty assessment shall be paid interest as provided by subdivision (g) of Section 14171.

(f) Nothing in this section shall prohibit a provider from repaying all or a part of the disputed overpayment or penalty assessment without prejudice to the provider's right to a hearing pursuant to subdivision (b) of Section 14171 or pursuant to Section 100171 of the Health and Safety Code.

(g) If a provider appeals the assessment of a civil money penalty, liquidation of the penalty shall be deferred until the appeal is rejected or a final administrative decision is issued.

(h) If on the basis of reliable evidence, the department has a valid basis for believing that, with respect to a provider, proceedings have been or will shortly be instituted in a state or federal court for purposes of determining whether the provider is insolvent or bankrupt under appropriate state or federal law, or that a provider is or will shortly be taking action which reasonably might seriously hinder or defeat the department's ability to collect overpayments in the future, the department may immediately adjust any payments to the provider to a level necessary to insure that no overpayment to the provider is made.

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CHAPTER 602

An act to amend Sections 1212, 1217, 1228, and 1231 of, and to add Sections 1218.1, 1218.2, 1226.1, 1226.2, 1226.3, and 1229.1 to, the Health and Safety Code, relating to clinics.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 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's primary care clinics are essential partners with the state in providing a health care safety net for underserved, uninsured, and underinsured populations in a cost-effective manner.

(b) California's primary care clinics generate significant savings to the state and to local communities by providing primary and preventive care that responds to patients' needs before medical problems become serious or life-threatening, and by reducing the reliance of patients, including the uninsured and underinsured, on costly emergency room care, inpatient treatment and specialty care.

(c) Primary care clinics operate most similarly to private doctors' offices, but are required to comply with complicated, burdensome regulations more suited to hospitals, skilled nursing facilities, and other facilities intended to meet the 24-hour care needs of medically fragile patients.

(d) The need for primary care clinics is growing dramatically due to the continuing increase of uninsured and underinsured patients in California, an escalating unemployment rate, and a severely depressed economy.

(e) The current system of licensing primary care clinics is out of step with contemporary health care delivery systems, and results in a significant waste of taxpayer and community resources that could otherwise be devoted to patient care.

(f) Administrative streamlining of the licensure of new and continuing primary care clinics will result in substantial cost savings to the state and improved access to health care for underserved populations.

SEC. 2. Section 1212 of the Health and Safety Code is amended to read:

1212. (a) Any person, firm, association, partnership, or corporation desiring a license for a clinic or a special permit for special services under the provisions of this chapter, shall file with the department a verified application on forms prescribed and furnished by the department, containing the following:

(1) Evidence satisfactory to the department that the applicant is of reputable and responsible character. If the applicant is a firm, association, partnership, trust, corporation, or other artificial or legal entity, like evidence shall be submitted as to the members, partners, trustees or shareholders, directors, and officers thereof and as to the person who is to be the administrator of, and exercise control, management, and direction of the clinic for which application is made.

(2) If the applicant is a partnership, the name and principal business address of each partner, and, if any partner is a corporation, the name and principal business address of each officer and director of the corporation and name and business address of each stockholder owning 10 percent or more of the stock thereof.

(3) If the applicant is a corporation, the name and principal business address of each officer and director of the corporation, and where the applicant is a stock corporation, the name and principal business address of each stockholder holding 10 percent or more of the applicant's stock and, where any stockholder is a corporation, the name and principal business address of each officer and director of the corporate stockholder.

(4) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and rules and regulations promulgated under this chapter by the department.

(5) The name and address of the clinic, and if the applicant is a professional corporation, firm, partnership, or other form of organization, evidence that the applicant has complied with the requirements of the Business and Professions Code governing the use of fictitious names by practitioners of the healing arts.

(6) The name and address of the professional licentiate responsible for the professional activities of the clinic and the licentiate's license number and professional experience.

(7) The class of clinic to be operated, the character and scope of advice and treatment to be provided, and a complete description of the building, its location, facilities, equipment, apparatus, and appliances to be furnished and used in the operation of the clinic.

(8) Sufficient operational data to allow the department to determine the class of clinic that the applicant proposes to operate and the initial license fee to be charged.

(9) Any other information as may be required by the department for the proper administration and enforcement of this chapter, including, but not limited to, evidence that the clinic has a written policy relating to the dissemination of the following information to patients:

(A) A summary of current state laws requiring child passenger restraint systems to be used when transporting children in motor vehicles.

(B) A listing of child passenger restraint system programs located within the county, as required by Section 27360 or 27362 of the Vehicle Code.

(C) Information describing the risks of death or serious injury associated with the failure to utilize a child passenger restraint system.

(b) (1) No application is required where a licensed primary care clinic adds a service that is not a special service, as defined in Section 1203, or any regulation adopted thereunder, or remodels or modifies an existing primary care clinic site. However, the clinic shall notify the department, in writing, of the change in service or physical plant no less than 60 days prior to adding the service or remodeling or modifying an existing primary care clinic site. Nothing in this subdivision shall be construed to limit the authority of the department to conduct an inspection at any time pursuant to Section 1227, in order to ensure compliance with, or to prevent a violation of, this chapter, or any regulation adopted under this chapter.

(2) Where applicable city, county, or state law obligates the primary care clinic to obtain a building permit with respect to the remodeling or modification to be performed by the clinic, the primary care clinic shall provide a signed certification or statement as described in Section 1226.3 to the department within 60 days following completion of the remodeling or modification project covered by the building permit.

(c) In the course of fulfilling its obligations under Section 1221.09, the department shall ensure that any application form utilized by a primary care clinic, requiring information of the type specified in paragraph (1), (4), (8), or (9) of subdivision (a), is consistent with the requirements of Section 1225, including the requirement that rules and regulations for primary care clinics be separate and distinct from the rules and regulations for specialty clinics. Nothing in this section shall be construed to require the department to issue a separate application form for primary care clinics.

SEC. 3. Section 1217 of the Health and Safety Code is amended to read:

1217. (a) An applicant for a license to operate a primary care clinic, as specified in subdivision (a) of Section 1204 that meets all requirements for licensure under this chapter, except that it proposes to operate its clinic out of an existing facility that does not satisfy all of the applicable building requirements for the physical plant, other than fire and life safety requirements, shall be issued a license by the state department if both of the following requirements are met:

(1) The applicant establishes, by evidence satisfactory to the state department, that, where possible and feasible, the applicable building requirements have been met.

(2) The applicant submits a plan of modernization acceptable to the state department that sets forth the proposed changes to be made, during a period not to exceed three years from the date of initial licensure, to bring the applicant's facility into substantial conformance with applicable building requirements.

(b) Failure to complete the plan of modernization as approved and within the time allowed shall constitute a basis for revocation or nonrenewal of the applicant's license unless the applicant earlier applies for and obtains a waiver from the department. The director shall waive building requirements for primary care clinics where he or she determines all of the following conditions are met:

(1) That the requirements cannot be met by an applicant, or that they can be met only at an unreasonable and prohibitive cost.

(2) That the requirements are not essential to protect the health and safety of the clinic staff or the public it serves.

(3) That the granting of the waiver applied for is in the public interest.

SEC. 4. Section 1218.1 is added to the Health and Safety Code, to read:

1218.1. (a) A primary care clinic that has held a valid, unrevoked, and unsuspended license for at least the immediately preceding five years, with no demonstrated history of repeated or uncorrected violations of this chapter or any regulation adopted under this chapter that pose immediate jeopardy to a patient, as defined in subdivision (d), and that has no pending action to suspend or revoke its license, may file an application under this section to establish a primary care clinic at an additional site, which shall hereafter be referred to as the affiliate clinic. The department, upon receipt of the completed application, shall approve a license for the affiliate clinic, without the necessity of first conducting an initial onsite survey, if all of the following conditions are met:

(1) The existing primary care clinic, which shall hereafter be referred to as the parent clinic, has submitted a completed application for licensure for the affiliate clinic and the associated application fee.

(2) The parent and affiliate clinics' corporate officers, as specified in Section 5213 of the Corporations Code, are the same.

(3) The parent and affiliate clinics are both owned and operated by the same nonprofit organization with the same board of directors.

(4) The parent clinic has submitted evidence to the department establishing compliance with the minimum construction standards of adequacy and safety of the affiliate clinic's physical plant pursuant to subdivision (b) of Section 1226.

(b) The department shall issue a license under this section within 30 days of receipt of a completed application. If approved, a license shall be issued within seven days of approval. If the department determines

that an applicant does not meet the conditions stated in subdivision (a), it shall identify, in writing and with particularity, the grounds for that determination, and shall instead process the application in accordance with the time specified in Section 1218.

(c) Nothing in this section shall prohibit the department from conducting a licensing inspection at any time after receipt of the completed application.

(d) For purposes of this section, ''immediate jeopardy to a patient'' means a situation in which the clinic's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient.

SEC. 5. Section 1218.2 is added to the Health and Safety Code, to read:

1218.2. Notwithstanding any other provision of law, two or more primary care clinics that are operated by a single nonprofit corporation shall be entitled to consolidate their administrative functions within the State of California without first obtaining the approval of the department. The department shall have access to offsite records. Upon request for access by the department, offsite records shall either be transferred to a clinic or administrative site or be available at the offsite facility within 48 hours. The administrative functions are limited to the following:

(a) Offsite storage and maintenance of patient medical records that have been inactive for at least three years.

(b) Offsite storage and maintenance of personnel records, except that copies of specific records documenting the employees' date of hire, general qualifications, proof of current licensure if applicable, training, and annual health checks shall be kept at the site at which the employee provides all or a majority of his or her services.

(c) Billing and related financial functions.

(d) Purchasing functions.

SEC. 6. Section 1226.1 is added to the Health and Safety Code, to read:

1226.1. (a) A primary care clinic shall comply with the following requirements regarding health examinations and other public health protections for individuals working in a primary care clinic:

(1) An employee working in a primary care clinic who has direct contact with patients shall have a health examination within six months prior to employment or within 15 days after employment. Each examination shall include a medical history and physical evaluation. A written examination report, signed by the person performing the examination, shall verify that the employee is able to perform his or her assigned duties.

(2) At the time of employment, testing for tuberculosis shall consist of a purified protein derivative intermediate strength intradermal skin test. If a positive reaction is obtained from the skin test, the employee shall be referred to a physician to determine if a chest X-ray is necessary. Annual examinations shall be performed only when medically indicated.

(3) The clinic shall maintain a health record for each employee that includes reports of all employment-related health examinations. These records shall be kept for a minimum of three years following termination of employment.

(4) An employee known to have or exhibiting signs or symptoms of a communicable disease shall not be permitted to work until he or she submits a physician's certification that the employee is sufficiently free of the communicable disease to return to his or her assigned duties.

(b) Any regulation adopted before January 1, 2004, that imposes a standard on a primary care clinic that is more stringent than described in this section is void.

SEC. 7. Section 1226.2 is added to the Health and Safety Code, to read:

1226.2. The Community Clinics Advisory Committee provided for in subdivision (b) of Section 1226 shall meet on an ad hoc basis and shall be comprised of at least 15 individuals who are employed by, or under contract to provide service to, a community clinic on a full-time basis, either directly or as a representative of a clinic association. Members of the committee shall be appointed by the three statewide primary care clinic associations in California that represent the greatest number of community or free clinic sites.

SEC. 8. Section 1226.3 is added to the Health and Safety Code, to read:

1226.3. A primary care clinic may establish compliance with the minimum construction standards of adequacy and safety for the physical plant described in subdivision (b) of Section 1226 by submitting a written certification, as described in Section 5536.26 of the Business and Professions Code, from a licensed architect or a written statement from a local building department that the applicable construction, remodeling, alteration, or other applicable modification of the physical plant is in compliance with these standards. No particular form of certification or statement shall be required by the department. Any form of statement utilized by a city or county building department, or certification by a licensed architect, indicating that the premises conform to the requirements of the California Building Standards Code, shall be accepted by the department as sufficient proof of compliance. Enforcement of compliance with applicable provisions of the California Building Standards Code, pursuant to subdivision (b) of Section 1226,

shall be within the exclusive jurisdiction of the local building department.

SEC. 9. Section 1228 of the Health and Safety Code is amended to read:

1228. (a) Except as provided in subdivision (c), every clinic for which a license or special permit has been issued shall be periodically inspected. The frequency of inspections shall depend upon the type and complexity of the clinic or special service to be inspected. Inspections shall be conducted no less often than once every three years and as often as necessary to ensure the quality of care being provided.

(b) (1) During inspections, representatives of the department shall offer any advice and assistance to the clinic as they deem appropriate. The department may contract with local health departments for the assumption of any of the department's responsibilities under this chapter. In exercising this authority, the local health department shall conform to the requirements of this chapter and to the rules, regulations, and standards of the department.

(2) The department shall reimburse local health departments for services performed pursuant to this section, and these payments shall not exceed actual cost. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the department and filed with the department.

(c) This section shall not apply to any of the following:

(1) A rural health clinic.

(2) A primary care clinic accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association for Ambulatory Health Care (AAAHC), or any other accrediting organization recognized by the department.

(3) An ambulatory surgical center.

(4) An end stage renal disease facility.

(5) A comprehensive outpatient rehabilitation facility that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both.

(d) Notwithstanding paragraph (2) of subdivision (c), the department shall retain the authority to inspect a primary care clinic pursuant to Section 1227, or as necessary to ensure the quality of care being provided.

SEC. 10. Section 1229.1 is added to the Health and Safety Code, to read:

1229.1. No notification of deficiency, civil or criminal penalty, fine, sanction, or denial, suspension, or revocation of licensure, may be imposed against a primary care clinic, or any person acting on behalf of

the clinic, for a violation of a regulation, as defined in Section 11342.600 of the Government Code, including every rule, regulation, order, or standard of general application, or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, unless the regulation has been adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 11. Section 1231 of the Health and Safety Code is amended to read:

1231. (a) All clinics shall maintain compliance with the licensing requirements. These requirements shall not, however, prohibit the use of alternate concepts, methods, procedures, techniques, space, equipment, personnel qualifications, or the conducting of pilot projects, provided these exceptions are carried out with provision for safe and adequate patient care and with prior written approval of the department. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the state department. Where a licensee submits a single program flexibility request and substantiating evidence on behalf of more than one similarly situated primary care clinic, the department may approve the program flexibility request as to each of the primary care clinics identified in the request. The department shall approve or deny any request within 60 days of submission. This approval shall be in writing and shall provide for the terms and conditions under which the exception is granted. A denial shall be in writing and shall specify the basis therefor.

(b) Substantiating evidence of a shortage of a specific health care professional that is submitted in support of a request for utilization of alternatives to personnel requirements contained in regulations adopted under this chapter may include documentation that the clinic is located in a geographic area that is either deemed under federal law, or designated by the Office of Statewide Health Planning and Development, as a medically underserved area, a health professional shortage area, or as serving, in whole or in part, a medically underserved population.

(c) If after investigation the department determines that a clinic granted a waiver pursuant to this section is operating in a manner contrary to the terms or conditions of the waiver, the director shall immediately revoke the waiver as to that clinic site.

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

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 603

An act to amend Section 30101.7 of the Revenue and Taxation Code, relating to tobacco.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 30101.7 of the Revenue and Taxation Code is amended to read:

30101.7. (a) It is the intent of the Legislature in enacting this section to facilitate the collection of all applicable state surtaxes and sales or use taxes on cigarettes sold to residents of the state.

(b) Except as provided in subdivision (d), no person may engage in a retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale.

(c) For the purposes of this section, ''face-to-face sale'' means a sale in which the purchaser is in the physical presence of the seller or the seller's employee or agent at the time of the sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller's physical presence or the physical presence of the seller's employee or agent at the time of the sale.

(d) A person may engage in a non-face-to-face sale of cigarettes to a person in California provided that both of the following conditions are met:

(1) The seller has fully complied with all of the requirements of Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the Jenkins Act.

(2) The seller has fully complied with either of the following requirements:

(A) All applicable California taxes on the cigarettes have been paid.

(B) The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States an externally visible and easily legible notice located on the same side of the shipping container as the address to which the

package is delivered stating as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

(e) The State Board of Equalization shall provide information relative to a seller's failure or attempt to comply with the Jenkins Act to the Attorney General.

(f) The Attorney General or a city attorney, county counsel, or district attorney may bring a civil action to enforce this section against any person that violates this section and, in addition to any other remedies provided by law, the court shall assess a civil penalty in accordance with the following schedule:

(1) A civil penalty of not less than one thousand dollars ($1,000) and not more than two thousand dollars ($2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars ($2,500) and not more than three thousand five hundred dollars ($3,500) for the second violation within a five-year period.

(3) A civil penalty of not less than four thousand dollars ($4,000) and not more than five thousand dollars ($5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than six thousand five hundred dollars ($6,500) for a fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars ($10,000) for a fifth or subsequent violation within a five-year period.

(g) The Attorney General shall provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act.

(h) This section does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

(i) Nothing in this section shall relieve the seller of cigarettes from any other applicable requirement of state law relating to the sale of cigarettes.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect

other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 604

An act to amend Section 6105 of the Commercial Code, and to amend Sections 72, 220.5, 531.9, 533, and 1610.8 of, and to add Sections 256.6, 256.7, and 276.5 to, the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 6105 of the Commercial Code is amended to read:

6105. In order to comply with subdivision (b) of Section 6104 each of the following shall be satisfied:

(a) The notice shall comply with each of the following:

(1) State that a bulk sale is about to be made.

(2) State the name and business address of the seller together with any other business name and address listed by the seller (subdivision (a) of Section 6104) and the name and business address of the buyer.

(3) State the location and general description of the assets.

(4) State the place and the anticipated date of the bulk sale.

(5) State whether or not the bulk sale is subject to Section 6106.2 and, if so subject, the matters required by subdivision (f) of Section 6106.2.

(b) At least 12 business days before the date of the bulk sale, the notice shall be:

(1) Recorded in the office of the county recorder in the county or counties in this state in which the tangible assets are located and, if different, in the county in which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

(2) Published at least once in a newspaper of general circulation published in the judicial district in this state in which the tangible assets are located and in the judicial district, if different, in which the seller is located (paragraph (2) of subdivision (a) of Section 6103), if in either case there is one, and if there is none, then in a newspaper of general circulation in the county in which the judicial district is located.

(3) Delivered or sent by registered or certified mail to the county tax collector in the county or counties in this state in which the tangible assets are located. If delivered during the period from January 1 to May

7, inclusive, the notice shall be accompanied by a completed business property statement with respect to property involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation Code.

If the tangible assets are located in more than one judicial district in this state, the publication required in paragraph (2) shall be in a newspaper of general circulation published in the judicial district in this state in which a greater portion of the tangible assets are located, on the date the notice is published, than in any other judicial district in this state and, if different, in the judicial district in which the seller is located (paragraph (2) of subdivision (a) of Section 6103). As used in this subdivision, ''business day'' means any day other than a Saturday, Sunday, or day observed as a holiday by the state government.

SEC. 2. Section 72 of the Revenue and Taxation Code is amended to read:

72. (a) A copy of any building permit issued by any city, county, or city and county shall be transmitted by each issuing entity to the county assessor as soon as possible after the date of issuance.

(b) A copy of any certificate of occupancy or other document that shows the date of completion of new construction issued or finalized by any city, county, or city and county, shall be transmitted by each entity to the county assessor within 30 days after the date of issuance or finalization.

(c) At the time an assessee files, or causes to be filed, an approved set of building plans with the city, county, or city and county, a scale copy of the floor plans and exterior dimensions of the building designated for the county assessor shall be filed by the assessee or his or her designee. The scale copy shall be in sufficient detail to allow the assessor to determine the square footage of the building and, in the case of a residential building, the intended use of each room. An assessee, or his or her designee, where multiple units are to be constructed from the same set of building plans, may file only one scale copy of floor plans and exterior dimensions, so long as each application for a building permit with respect to those building plans specifically identifies the scale copy filed pursuant to this section. However, where the square footage of any one of the multiple units is altered, an assessee, or his or her designee, shall file a scale copy of the floor plan and exterior dimensions that specifically identifies the alteration from the previously filed scale copy. The receiving authority shall transmit that copy to the county assessor as soon as possible after the final plans are approved.

(d) The board of supervisors of a county may enact, by a majority vote of its entire membership, an ordinance that requires the local agency that approves the tentative map or maps, and any conditions of approval for the tentative map or maps that are filed with a county or a city in that county, to submit a copy of the map or maps, and any conditions of

approval for the tentative map or maps, to the county assessor as soon as possible after the map or maps are filed. The ordinance may require that the map or maps be provided to the county assessor in an electronic format, if available in that form.

SEC. 3. Section 220.5 of the Revenue and Taxation Code is amended to read:

220.5. (a) Aircraft of historical significance shall be exempt from taxation.

(b) The exemption provided in subdivision (a) applies only if all of the following conditions are satisfied:

(1) The assessee is an individual owner who does not hold the aircraft primarily for purposes of sale.

(2) The assessee does not use the aircraft for commercial purposes or general transportation.

(3) The aircraft is available for display to the public at least 12 days during the 12-month period immediately preceding the lien date for the year for which the exemption is claimed. If the aircraft was first made available for public display less than 12 days prior to the lien date, the exemption may be granted if the claimant certifies in writing that the aircraft will be made available for public display at least 12 days during the 12-month period commencing with the first day the property was made available for public display. When applying for an exemption pursuant to this section, the claimant shall attach to that application a certificate of attendance from the event coordinator of the event at which the aircraft was displayed as required by this paragraph.

(c) When claiming an exemption pursuant to this section, the claimant shall provide all information required and answer all questions contained in an affidavit furnished by the assessor. The claimant shall sign and swear to the accuracy of the contents of the affidavit before either a notary public or the assessor or his or her designee, at the claimant's option. The assessor may require additional proof of the information or answers provided in the affidavit before allowing the exemption.

(d) For purposes of this section, ''aircraft of historical significance'' means any aircraft that is an original, restored, or replica of a heavier than air powered aircraft that is 35 years or older or any aircraft of a type or model of which there are fewer than five in number known to exist worldwide.

(e) A fee of thirty-five dollars ($35) shall be charged and collected by the assessor upon the initial application for an exemption pursuant to this section.

SEC. 4. Section 256.6 is added to the Revenue and Taxation Code, to read:

256.6. (a) (1) Prior to the lien date, the assessor shall annually mail a notice to every person or entity that received, in the immediately preceding fiscal year, the exemption provided by Section 204.

(2) The board shall prescribe the form for the annual notice described in paragraph (1), which form shall specify the following:

(A) The circumstances under which the property may be disqualified from exemption.

(B) That the person or entity has a duty to inform the assessor if the property no longer qualifies for the exemption.

(b) At the same time the notice described in subdivision (a) is mailed, the assessor shall include with that notice a card that may be returned to the assessor by the person or entity receiving the notice, which card shall be in the following form:

To all persons and entities that have received a nonprofit cemetery exemption for the ____ fiscal year.
QUESTION: Will the property to which the exemption applied in the ____ fiscal year continue to be used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance, or upkeep of that property or those dead in the ____ fiscal year?
___ yes ___ no
Signature: _____ Title: _____

Failure to return this card does not constitute a waiver of this exemption as specified by the California Constitution, but may result in an onsite inspection by the assessor to verify any exempt activity.

SEC. 5. Section 256.7 is added to the Revenue and Taxation Code, to read:

256.7. (a) Notwithstanding Sections 254, 256.5, and 256.6, an affidavit claiming the cemetery exemption, as provided for in subdivision (g) of Section 3 of Article XIII of the California Constitution and Section 204, is not required to be filed in order to receive the exemption for any cemetery that exists, or is discovered to exist, in the unincorporated area of a county for which the assessor is unable to identify the legal cemetery authority, as defined in Section 7018 of the Health and Safety Code, that may by law claim the exemption for that cemetery, if both of the following apply:

(1) The cemetery was used by residents of the state prior to the year 1900.

(2) The cemetery is no longer used for current or future interments.

(b) Any tax, penalty, or interest imposed upon a cemetery subject to this section 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.

SEC. 6. Section 276.5 is added to the Revenue and Taxation Code, to read:

276.5. If a person claiming the exemption of an aircraft of historical significance under Section 220.5 fails to file the affidavit required by that section by 5 p.m. on February 15 of the fiscal year for which the exemption is claimed, but files that affidavit on or before the following August 1, the assessment shall be reduced by an amount equal to 80 percent of the reduction that would have been allowed had the affidavit been timely filed.

SEC. 7. Section 531.8 of the Revenue and Taxation Code is amended to read:

531.8. No escape assessment shall be enrolled under this article before 10 days after the assessor has mailed or otherwise delivered to the affected taxpayer a ''Notice of Proposed Escape Assessment'' with respect to one or more specified tax years. The notice shall prominently display on its face the following heading:

''NOTICE OF PROPOSED ESCAPE ASSESSMENT''

The notice shall contain all of the following:

(a) The amount of the proposed escape assessments for each tax year at issue.

(b) The telephone number of the assessor's office to allow a taxpayer to contact that office with respect to the proposed escape assessment or assessments.

SEC. 8. Section 533 of the Revenue and Taxation Code is amended to read:

533. (a) (1) Assessments made pursuant to Article 3 (commencing with Section 501) of this chapter or pursuant to this article shall be entered on the roll for the current assessment year, as defined in Section 118, and, if this is not the roll for the assessment year in which the property escaped assessment, the entry shall be followed with ''Escaped assessment for year ____ pursuant to Sections ____ of the Revenue and Taxation Code.''

(2) The assessor may make the entries described in paragraph (1) on either the hard copy of the roll or the electronic version of the roll, as determined by the assessor.

(b) (1) If the assessments are made as a result of an audit that discloses that property assessed to the party audited has been incorrectly assessed either for a past tax year for which taxes have been paid and a claim for refund is not barred by Section 5097 or for any tax year for which the taxes are unpaid, the tax refunds resulting from the incorrect

assessments shall be an offset against proposed tax liabilities, including accumulated penalties and interest, resulting from escaped assessments for any tax year covered by the audit.

(2) Beginning with the 1981–82 fiscal year, assessment for the current and prior year shall be entered using a 100 percent assessment ratio and the tax rate for years prior to the 1981–82 fiscal year will be divided by four.

(3) If these tax refunds exceed any proposed tax liabilities, including accumulated penalties and interest, the party audited shall be notified by the tax collector of the amount of the excess and of the fact that a claim for cancellation or refund may be filed with the county as provided by Section 5096 or 5096.7. If the assessment caused an excess payment of taxes and therefore resulted in an overpayment by the state for property tax relief as provided by Section 219, then subsequent subventions for property tax relief shall be reduced by the amount of the overpayment.

SEC. 9. Section 1610.8 of the Revenue and Taxation Code, as amended by Chapter 199 of the Statutes of 2003, 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 improper assessments, 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. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 605

An act to amend Sections 6459, 7093.5, 7326, 8105, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, 60022, 60507, 60604, 60606, and 60636 of, to add Section 6451.5 to, and to repeal Section 7262.7 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 6451.5 is added to the Revenue and Taxation Code, to read:

6451.5. (a) Notwithstanding Section 6451, the use taxes imposed by this part with respect to the storage, use, or other consumption in this state of tangible personal property are due and payable by the purchaser on or before the 15th day of the fourth month following the taxable year in which the storage, use, or other consumption of the property first becomes taxable.

(b) For purposes of this section, ''taxable year'' means the calendar year or the fiscal year upon the basis of which the taxable income is computed pursuant to the Personal Income Tax Law (Part 10 (commencing with Section 17001)) or the Corporation Tax Law (Part 11 (commencing with Section 23001)). If no fiscal year has been established, ''taxable year'' means the calendar year.

(c) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the board pursuant to this part, or to any person with purchases subject to use tax that exceed ten thousand dollars ($10,000) during any calendar quarter of the taxable year for which the return is filed.

(d) This section shall not apply to use tax due from the sale of, or the storage, use, or other consumption in this state of the following:

(1) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code.

(2) Use tax that applies to a vessel or aircraft, as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(3) Use tax that applies to a vehicle required to be registered under the Vehicle Code, a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(4) Use tax imposed on a lessee of tangible personal property.

SEC. 2. Section 6459 of the Revenue and Taxation Code is amended to read:

6459. (a) The board for good cause may extend, not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

(1) A budget for the state has not been adopted by July 1.

(2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month following the month, in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment. However, no interest shall be due on that portion of the payment equivalent to the amount due to the person from the state on the due date of the payment.

SEC. 3. Section 7093.5 of the Revenue and Taxation Code is amended to read:

7093.5. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall

review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a

recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 4. Section 7262.7 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 7326 of the Revenue and Taxation Code is amended to read:

7326. ''Motor vehicle fuel'' means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel.

SEC. 6. Section 8105 of the Revenue and Taxation Code is amended to read:

8105. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the motor vehicle fuel or, if the tax was not invoiced at the time of the purchase of the motor vehicle fuel, the application for refund shall be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the Controller, the Treasurer, or the state.

SEC. 7. Section 9271 of the Revenue and Taxation Code is amended to read:

9271. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with

a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred

back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 9255.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 8. Section 30459.1 of the Revenue and Taxation Code is amended to read:

30459.1. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective.

The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any

settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 30455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 9. Section 32471 of the Revenue and Taxation Code is amended to read:

32471. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 32455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 10. Section 40211 of the Revenue and Taxation Code is amended to read:

40211. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of surcharge in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that

is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 11. Section 41171 of the Revenue and Taxation Code is amended to read:

41171. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to

whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of surcharge in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 12. Section 43522 of the Revenue and Taxation Code is amended to read:

43522. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 13. Section 45867 of the Revenue and Taxation Code is amended to read:

45867. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fees in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the feepayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 14. Section 46622 of the Revenue and Taxation Code is amended to read:

46622. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fee in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the feepayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disappproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the

same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 15. Section 50156.11 of the Revenue and Taxation Code is amended to read:

50156.11. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fees in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the feepayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or

issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 16. Section 55332 of the Revenue and Taxation Code is amended to read:

55332. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fees in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the feepayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential information for purposes of Section 55381.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 17. Section 60022 of the Revenue and Taxation Code, as added by Section 3 of Chapter 8 of the Second Extraordinary Session of 2001, is amended to read:

60022. (a) ''Diesel fuel'' means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

''Diesel fuel'' does not include kerosene, gasoline, liquified petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(b) This section shall become operative on January 1, 2007.

SEC. 18. Section 60507 of the Revenue and Taxation Code is amended to read:

60507. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the diesel fuel or, if the tax was not invoiced at the time of the purchase of the diesel fuel, the application for refund shall be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the board, the Treasurer, or the state.

SEC. 19. Section 60604 of the Revenue and Taxation Code is amended to read:

60604. Every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/refueler, train operator, pipeline operator, vessel operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 60706.

SEC. 20. Section 60606 of the Revenue and Taxation Code is amended to read:

60606. The board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/refueler, train operator, pipeline operator, vessel operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/refueler, train operator, pipeline operator, vessel operator, or person makes of the diesel fuel in order to ascertain whether all taxes due under this part are being properly reported and paid.

SEC. 21. Section 60636 of the Revenue and Taxation Code is amended to read:

60636. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute

that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred

back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 60609.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 22. Section 2 of this act shall become operative only if Senate Bill 1009 is not enacted during the 2003 portion of the 2003–04 Regular Session.

CHAPTER 606

An act to amend Section 6902.2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 6902.2 of the Revenue and Taxation Code is amended to read:

6902.2. (a) (1) In lieu of claiming the credit allowed by Section 17053.49 or 23649, a person who has paid sales tax reimbursement to

a retailer or use tax on a purchase or purchases of property for which a credit may be allowed pursuant to those sections, may file a claim for refund equal to the credit amount that would otherwise be allowed pursuant to those sections. Any claim so filed shall be submitted to the board on a form prescribed by the board, shall be filed no earlier than the date a claim could have been made for a tax credit or carryover of a credit under Section 17053.49 or 23649, whichever is applicable, and shall be for an amount not in excess of the amount of the credit that could have been used to reduce the ''net tax,'' as defined in Section 17039, or the ''tax,'' as defined in Section 23036. Any credit carried over pursuant to Section 17053.49 or Section 23649 may not be refunded under this section until the credit carried over could be applied to reduce the ''net tax'' (as defined in Section 17039) or the ''tax'' (as defined in Section 23036), as applicable. Under no circumstances may any claim for refund exceed the ''net tax,'' as defined by Section 17039, or the ''tax,'' as defined by Section 23036, after the allowance of any credits authorized by Section 17039 or 23036. A claim for refund shall, unless the sale or use of the property is otherwise exempt under this part, be accompanied by proof of payment of the tax to a retailer, including, but not limited to, a copy of an invoice or purchase contract that indicates the following:

(A) The date on which the purchase occurred.

(B) A description of the property purchased.

(C) The price paid for the property.

(D) The amount of tax paid with respect to the purchase.

(2) In the case of a person who has self-reported use tax to the board, the claim for refund shall also indicate the amount of use tax paid and the period for which that tax was remitted.

(3) Any person who claims a refund under this section shall make an irrevocable election to waive the equivalent amount of credit allowed under Section 17053.49 or 23649. Any refund claimed under this section shall be in lieu of claiming any credit under Section 17053.49 or 23649. Any person electing to file a claim for refund pursuant to this section shall provide a copy of the personal or corporation tax return on which the tax liability was assessed for which the in-lieu refund is being claimed under this section.

(b) No interest shall be paid on any refund made pursuant to this section.

(c) Notwithstanding Section 6961, the board may recover any refund or part thereof that is erroneously made pursuant to this section. In recovering any erroneous refund made pursuant to this section, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 6481) or Article 4 (commencing with Section 6536) of Chapter 5. Except in the case of fraud, that determination shall be made within three years from the last

day of the month following the quarterly period in which the board approved the refund.

(d) The board shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the board and the Franchise Tax Board, of the persons who during the year have claimed a refund of sales or use tax under this section and the amount of the refund issued to each person.

(e) Any refund approved by the board pursuant to this section shall be payable from the General Fund.

SEC. 2. The amendments made to subdivision (a) of Section 6902.2 of the Revenue and Taxation Code by Section 1 of this act are declaratory of existing law, but are effective for any claims for refund filed with the State Board of Equalization on or after August 7, 2003.

CHAPTER 607

An act to amend Sections 29.5, 2060, 2135.5, 2190.5, 2285, 2386, 2415, 2441, 2442, 2570.4, 4980.43, 4980.44, 4980.57, 4982, 4982.2, 4984.8, 4996.18, 4996.21, 4996.22, 4996.23 5657, 6737.1, 6737.3, 6756, 7029.1, 7124.6, 7138, 7141, 8030.2, 8762, 8766, 8773.2, and 8773.4 of, to amend and repeal Section 4997 of, to amend, repeal, and add Section 2439 of, to add Sections 7013.5, 7027.4, 7116.5, and 8710.1 to, and to repeal Section 2106 of, the Business and Professions Code, and to amend Section 19825 of the Health and Safety Code, relating to professions and vocations.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 29.5 of the Business and Professions Code is amended to read:

29.5. In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 17520 of the Family Code.

SEC. 2. Section 2060 of the Business and Professions Code is amended to read:

2060. Nothing in this chapter applies to any practitioner located outside this state, when in actual consultation, whether within this state or across state lines, with a licensed practitioner of this state, or when an invited guest of the California Medical Association or the California

Podiatric Medical Association, or one of their component county societies, or of an approved medical or podiatric medical school or college for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if he or she is, at the time of the consultation, lecture, or demonstration a licensed physician and surgeon or a licensed doctor of podiatric medicine in the state or country in which he or she resides. This practitioner shall not open an office, appoint a place to meet patients, receive calls from patients within the limits of this state, give orders, or have ultimate authority over the care or primary diagnosis of a patient who is located within this state.

SEC. 3. Section 2106 of the Business and Professions Code is repealed.

SEC. 4. Section 2135.5 of the Business and Professions Code is amended to read:

2135.5. Upon review and recommendation, the Division of Licensing may determine that an applicant for a physician and surgeon's certificate has satisfied the medical curriculum requirements of Section 2089, the clinical instruction requirements of Sections 2089.5 and 2089.7, and the examination requirements of Section 2170 if the applicant meets all of the following criteria:

(a) He or she holds an unlimited and unrestricted license as a physician and surgeon in another state.

(b) He or she is certified by a specialty board that is a member board of the American Board of Medical Specialties.

(c) He or she is not subject to denial of licensure under Section 480.

(d) He or she has not graduated from a school that has been disapproved by the division.

SEC. 5. Section 2190.5 of the Business and Professions Code is amended to read:

2190.5. (a) All physicians and surgeons shall complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients. For the purposes of this section, this course shall be a one-time requirement of 12 credit hours within the required minimum established by regulation, to be completed by December 31, 2006. All physicians and surgeons licensed on and after January 1, 2002, shall complete this requirement within four years of their initial license or by their second renewal date, whichever occurs first. The board may verify completion of this requirement on the renewal application form.

(b) By regulatory action, the board may exempt physicians and surgeons by practice status category from the requirement in subdivision (a) if the physician and surgeon does not engage in direct patient care, does not provide patient consultations, or does not reside in the State of California.

(c) This section shall not apply to physicians and surgeons practicing in pathology or radiology specialty areas.

SEC. 6. Section 2285 of the Business and Professions Code is amended to read:

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

(d) Any medical school approved by the division or a faculty practice plan connected with the medical school.

SEC. 7. Section 2386 of the Business and Professions Code is amended to read:

2386. The bureau shall be the repository for all reports filed with the board pursuant to Article 11 (commencing with Section 800) of Chapter 2, and pursuant to Section 2220.

SEC. 8. Section 2415 of the Business and Professions Code is amended to read:

2415. (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing.

(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

(d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with that medical school.

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations.

SEC. 9. Section 2439 of the Business and Professions Code is amended to read:

2439. (a) Every licensee is exempt from the payment of the renewal fee provided the licensee has practiced medicine or podiatry for 20 years or more in this state, has reached the age of retirement under the Social Security Act, and customarily provides his or her services free of charge to any person, organization, or agency. In the event that charges are made, the charges shall be nominal and in no event shall the aggregate of such charges in any single calendar year be in an amount which would

result in his or her income being such as to make the practitioner ineligible for full social security benefits.

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

SEC. 10. Section 2439 is added to the Business and Professions Code, to read:

2439. (a) Every licensee is exempt from the payment of the renewal fee and requirement for continuing medical education if the licensee has applied to the Division of Licensing for a retired license. The holder of a retired license may not engage in the practice of medicine or the practice of podiatric medicine.

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

SEC. 11. Section 2441 of the Business and Professions Code is amended to read:

2441. Any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice medicine due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice medicine. A licensee whose renewal fee has been waived pursuant to this section shall not engage in the practice of medicine unless and until the licensee pays the current renewal fee and does either of the following:

(a) Establishes to the satisfaction of the board, on a form prescribed by the board and signed under penalty of perjury, that the licensee's disability either no longer exists or does not affect his or her ability to practice medicine safely.

(b) Signs an agreement on a form prescribed by the board, signed under penalty of perjury, in which the licensee agrees to limit his or her practice in the manner prescribed by the reviewing physician.

SEC. 12. Section 2442 of the Business and Professions Code is amended to read:

2442. The renewal fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license renewal is for the sole purpose of providing voluntary, unpaid service.

SEC. 13. Section 2570.4 of the Business and Professions Code is amended to read:

2570.4. Nothing in this chapter shall be construed as preventing or restricting the practice, services, or activities of any of the following persons:

(a) Any person licensed, certified, or otherwise recognized in this state by any other law or regulation when that person is engaged in the

profession or occupation for which he or she is licensed, certified, or otherwise recognized.

(b) Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited educational program, if the person is designated by a title which clearly indicates his or her status as a student or trainee.

(c) Any person fulfilling the supervised fieldwork experience requirements of subdivision (c) of Section 2570.6, if the experience constitutes a part of the experience necessary to meet the requirement of that provision.

(d) Any person performing occupational therapy services in the state, if those services are performed for no more than 45 days in a calendar year in association with an occupational therapist licensed under this chapter, and the person is licensed under the laws of another state that the board determines has licensure requirements at least as stringent as the requirements of this chapter.

(e) Any person employed as an aide subject to the supervision requirements of this section.

SEC. 14. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. For those applicants who enroll in a qualifying degree program on or after January 1, 1995, not more than 750 hours of counseling and direct supervisor contact may be obtained prior to the granting of the qualifying master's or doctor's degree. However, this limitation shall not be interpreted to include professional enrichment activities. Except for personal psychotherapy hours gained after enrollment and commencement of classes in a qualifying degree program, no hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Experience shall be gained by interns and trainees either as an employee

or as a volunteer in any allowable work setting specified in this chapter. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed. A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. A person gaining postdegree experience shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons. The contact may be counted toward the experience requirement for licensure, up to the maximum permitted by subdivision (d). All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) The experience required by Section 4980.40 shall include supervised marriage and family therapy, and up to one-third of the hours may include direct supervisor contact and other professional enrichment activities.

(2) ''Professional enrichment activities,'' for the purposes of this section, may include group, marital or conjoint, family, or individual psychotherapy received by an applicant. This psychotherapy may include up to 100 hours taken subsequent to enrolling and commencing classes in a qualifying degree program, or as an intern, and each of those hours shall be triple counted toward the professional experience requirement. This psychotherapy shall be performed by a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry.

(e) (1) A trainee may gain the experience required by subdivision (f) of Section 4980.40 in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(f) (1) An intern may gain the experience required by subdivision (f) of Section 4980.40 in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (e), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) An intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40 who shall be employed by and practice at the same site as the intern's employer.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(g) All persons shall register with the board as an intern in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (h), all postdegree hours shall be gained as a registered intern.

(h) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(i) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(j) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining

to supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(k) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(*l*) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 15. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. (a) An unlicensed marriage and family therapist intern employed under this chapter shall:

(1) Have earned at least a master's degree as specified in Section 4980.40.

(2) Be registered with the board prior to the intern performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(3) File for renewal of registration annually for a maximum of five years after initial registration with the board. Renewal of registration shall include filing an application for renewal, paying a renewal fee of seventy-five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the issuance of the initial registration or the registrant's last renewal.

(4) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician

who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40, whichever is applicable. Continued employment as an unlicensed marriage and family therapist intern shall cease after six years unless the requirements of subdivision (b) are met. No registration shall be renewed or reinstated beyond the six years from initial issuance regardless of whether it has been revoked.

(b) When no further renewals are possible, either because the applicant has exhausted the number of renewals available or because of the repeal of Section 4980.44, as amended by Chapter 1114 of the Statutes of 1991, an applicant may apply for and obtain new intern registration status if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in all allowable work settings except in private practice.

SEC. 16. Section 4980.57 of the Business and Professions Code is amended to read:

4980.57. (a) The board shall require a licensee who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(b) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required under paragraph (1) of subdivision (c) of Section 4980.54.

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

SEC. 17. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the

circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration 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, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

SEC. 18. Section 4982.2 of the Business and Professions Code is amended to read:

4982.2. (a) A licensed marriage and family therapist, licensed clinical social worker, or educational psychologist whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board, or any portion of it, is stayed by the board itself, or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license that was revoked for unprofessional conduct, except that the board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of any probation period of three years, or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition may be heard by the board itself, or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code. The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of production and proof to

establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition. The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(c) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate.

(d) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4982.15. Where a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board.

(e) The board may take action with respect to the proposed decision and petition as it deems appropriate.

(f) The petition shall be on a form provided by the board, and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order.

(g) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(h) The petition shall be verified by the petitioner, who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(i) The board may delegate to its executive officer authority to order investigation of the contents of the petition, but in no case, may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(j) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(k) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(*l*) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 19. Section 4984.8 of the Business and Professions Code is amended to read:

4984.8. A licensed marriage and family therapist may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall pay a biennial fee of half of the active renewal fee and shall be exempt from continuing education requirements specified in Section 4980.54, but shall otherwise be subject to this chapter and shall not engage in the practice of marriage and family therapy in this state. A licensee on inactive status who has not committed any acts or crimes constituting grounds for denial of licensure may, upon his or her request, have his or her license to practice marriage and family therapy placed on active status. A licensee requesting his or her license to be placed on active status at any time between a renewal cycle shall pay the remaining half of the renewal fee. A licensee requesting to reactivate from an inactive status whose license will expire less than one year from the date of the request shall be required to complete 18 hours of continuing education for license renewal. A licensee requesting to reactivate from an inactive status whose license will expire more than one year from the date of the request shall be required to complete 36 hours of continuing education for license renewal.

SEC. 20. Section 4996.18 of the Business and Professions Code is amended to read:

4996.18. (a) Any person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board and shall be accompanied by a fee of ninety dollars ($90). An applicant for registration shall (1) possess a master's degree from an accredited school or department of social work, and (2) not have committed any crimes or

acts constituting grounds for denial of licensure under Section 480. On and after January 1, 1993, an applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(b) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. A registration may be renewed annually after initial registration by filing on or before the date on which the registration expires, an application for renewal, paying a renewal fee of seventy-five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the issuance of the initial registration or registrant's last renewal. Each person who registers or has registered as an associate clinical social worker, may retain that status for a total of six years.

(c) Notwithstanding the limitations on the length of an associate registration in subdivision (b), an associate may apply for, and the board shall grant, one-year extensions beyond the six-year period when no grounds exist for denial, suspension, or revocation of the registration pursuant to Section 480. An associate shall be eligible to receive a maximum of three one-year extensions. An associate who practices pursuant to an extension shall not practice independently and shall comply with all requirements of this chapter governing experience, including supervision, even if the associate has completed the hours of experience required for licensure. Each extension shall commence on the date when the last associate renewal or extension expires. An application for extension shall be made on a form prescribed by the board and shall be accompanied by a renewal fee of fifty dollars ($50). An associate who is granted this extension may work in all work settings authorized pursuant to this chapter.

(d) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(e) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

(f) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) An applicant who possesses a master's degree from an approved school or department of social work shall be able to apply experience the applicant obtained during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.20, 4996.21, or 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an approved school or department of social work and who obtained experience during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

SEC. 21. Section 4996.21 of the Business and Professions Code is amended to read:

4996.21. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) On or after January 1, 1999, an associate shall have at least 3,200 hours of post-master's degree experience in providing clinical social work services as permitted by Section 4996.9. At least 1,700 of these hours shall be gained under the supervision of a licensed clinical social worker. The remaining hours of the required experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined in a regulation adopted by the board. Experience shall consist of the following:

(1) A minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Supervision means responsibility for and control of the quality of clinical social work services being provided.

(c) Consultation or peer discussion shall not be considered to be supervision.

(d) Supervision shall include at least one hour of direct supervisor contact for a minimum of 104 weeks and shall include at least one hour

of direct supervisor contact for every 10 hours of client contact in each setting where experience is gained. Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group setting of not more than eight persons.

(e) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(f) (1) Experience shall only be gained in a setting that meets both of the following:

(A) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(B) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(2) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(3) Employment in a private practice as defined in paragraph (4) shall not commence until the applicant has been registered as an associate clinical social worker.

(4) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(5) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(6) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(g) While an associate may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to associates.

(h) An associate shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(i) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

SEC. 22. Section 4996.22 of the Business and Professions Code, as added by Section 11 of Chapter 481 of the Statutes of 2002, is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), on and after January 1, 2000, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.

(2) For those persons renewing during 1999, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of social work, as determined by the board. The coursework of continuing education described in this paragraph may be taken on or after the effective date of the continuing education regulations adopted by the board pursuant to the other provisions of this section.

(3) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) An accredited school of social work, as defined in Section 4990.4, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, and a mental health professional association, approved by the board.

(3) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(e) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(f) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(g) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(h) The board may adopt regulations as necessary to implement this section.

(i) On and after January 1, 1997, the board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Science Examiners Fund. The fees related to the administration of this section shall be sufficient to meet but shall not exceed the costs of administering the corresponding provisions

of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d), shall be deemed to be an approved provider.

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

SEC. 23. Section 4996.23 of the Business and Professions Code is amended to read:

4996.23. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) ''Supervision'' means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the ''Responsibility Statement for Supervisors of an Associate Clinical Social Worker'' form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. In addition, an associate shall receive an average of at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting experience is gained. No more than five hours of supervision, whether individual or group, shall

be credited during any single week. Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons receiving supervision.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(*l*) Associates shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if

that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

SEC. 24. Section 4997 of the Business and Professions Code, as added by Section 21 of Chapter 879 of the Statutes of 1998, is amended to read:

4997. A licensed clinical social worker may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall pay a biennial fee of half of the active renewal fee and shall be exempt from continuing education requirements specified in Section 4996.22, but shall otherwise be subject to this chapter and shall not engage in the practice of licensed clinical social work in this state. A licensee on inactive status who has not committed any acts or crimes constituting grounds for denial of licensure may, upon his or her request, have his or her license to practice licensed clinical social work placed on active status. A licensee requesting his or her license to be placed on active status between renewal cycles shall pay the remaining half of the renewal fee. A licensee requesting to reactivate from an inactive status whose license will expire less than one year from the date of the request shall be required to complete 18 hours of continuing education for license renewal. A licensee requesting to reactivate from an inactive status whose license will expire more than one year from the date of the request shall be required to complete 36 hours of continuing education for license renewal.

SEC. 25. Section 4997 of the Business and Professions Code, as added by Section 11 of Chapter 1234 of the Statutes of 1993, is repealed.

SEC. 26. Section 5657 of the Business and Professions Code is amended to read:

5657. Each licensee shall notify the executive officer of the board of any change of address of his or her place of business. 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. 27. Section 6737.1 of the Business and Professions Code is amended to read:

6737.1. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

(1) Single-family dwellings of woodframe construction not more than two stories and basement in height.

(2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units

each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.

(3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.

(4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety or welfare is involved.

(b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the responsible charge of, a licensed engineer, or by, or under the responsible control of, an architect licensed pursuant to Chapter 3 (commencing with Section 5500). The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation.

SEC. 28. Section 6737.3 of the Business and Professions Code is amended to read:

6737.3. A contractor licensed under Chapter 9 (commencing with Section 7000) of Division 3 is exempt from the provisions of this chapter relating to the practice of electrical or mechanical engineering so long as the services he or she holds himself or herself out as able to perform or does perform, which services are subject to the provisions of this chapter, are performed by, or under the responsible charge of a registered electrical or mechanical engineer insofar as the electrical or mechanical engineer practices the branch of engineering for which he or she is registered.

This section shall not prohibit a licensed contractor, while engaged in the business of contracting for the installation of electrical or mechanical systems or facilities, from designing those systems or facilities in accordance with applicable construction codes and standards for work to be performed and supervised by that contractor within the classification for which his or her license is issued, or from preparing electrical or mechanical shop or field drawings for work which he or she has contracted to perform. Nothing in this section is intended to imply that a licensed contractor may design work which is to be installed by another person.

SEC. 29. Section 6756 of the Business and Professions Code is amended to read:

6756. (a) An applicant for certification as an engineer-in-training shall, upon making a passing grade in that division of the examination prescribed in Section 6755, relating to fundamental engineering subjects, be issued a certificate as an engineer-in-training. A renewal or other fee, other than the application fee, may not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional engineer as provided in Section 6762.

(b) An engineer-in-training certificate does not authorize the holder thereof to practice or offer to practice civil, electrical, or mechanical engineering work, in his or her own right, or to use the titles specified in Sections 6732, 6736, and 6736.1.

(c) It is unlawful for anyone other than the holder of a valid engineer-in-training certificate issued under this chapter to use the title of ''engineer-in-training'' or any abbreviation of that title.

SEC. 30. Section 7013.5 is added to the Business and Professions Code, to read:

7013.5. In all application, citation, or disciplinary proceedings pursuant to this chapter and conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the testimony of a witness given in any contested civil or criminal action or special proceeding, in any state or before any governmental body or agency, to which the licensee or person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the proceedings, by means of a duly authenticated transcript of that testimony and without proof of the unavailability of the witness; provided that the registrar may order the production of and testimony by that witness, in lieu of or in addition to receiving a transcript of his or her testimony and may decline to receive in evidence the transcript of testimony, in whole or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross-examination.

SEC. 31. Section 7027.4 is added to the Business and Professions Code, to read:

7027.4. (a) It is a cause for discipline for any contractor to advertise that he or she is ''insured'' or has insurance without identifying in the advertisement the type of insurance, including, for example, ''commercial general liability insurance'' or ''workers' compensation insurance'' that is carried by the contractor. The contractor may abbreviate the title of the type of insurance.

(b) It is cause for discipline for a contractor to advertise that he or she is ''bonded'' if the reference is to a contractor's license bond required pursuant to Section 7071.6 or to a disciplinary bond required pursuant to Section 7071.8.

(c) ''Advertise,'' as used in this section, includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure or business vehicle or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, for the direct or indirect purpose of performing or offering to perform services that require a contractor's license.

SEC. 32. Section 7029.1 of the Business and Professions Code is amended to read:

7029.1. (a) Except as provided in this section, it is unlawful for any two or more licensees, each of whom has been issued a license to act separately in the capacity of a contractor within this state, to be awarded a contract jointly or otherwise act as a contractor without first having secured a joint venture license in accordance with the provisions of this chapter.

(b) Prior to obtaining a joint venture license, contractors licensed in accordance with this chapter may jointly bid for the performance of work covered by this section. If a combination of licensees submit a bid for the performance of work for which a joint venture license is required, a failure to obtain that license shall not prevent the imposition of any penalty specified by law for the failure of a contractor who submits a bid to enter into a contract pursuant to the bid.

(c) A violation of this section constitutes a cause for disciplinary action.

SEC. 33. Section 7116.5 is added to the Business and Professions Code, to read:

7116.5. It is a cause for discipline for a licensee to do any of the following:

(a) Engage in any conduct that subverts or attempts to subvert an investigation of the board.

(b) Threaten or harass any person or licensee for providing evidence in any possible or actual disciplinary action, arbitration, or other legal action.

(c) Discharge an employee primarily because of the employee's attempt to comply with or aid in compliance with the provisions of this chapter.

SEC. 34. Section 7124.6 of the Business and Professions Code is amended to read:

7124.6. (a) The registrar shall make available to members of the public the date, nature, and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) Have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) Citations shall be disclosed from the date of issuance and for five years after the date of compliance if no additional disciplinary actions have been filed against the licensee during the five-year period. If additional disciplinary actions were filed against the licensee during the five-year period, all disciplinary actions shall be disclosed for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those citations shall no longer be disclosed.

(2) Accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation if no additional disciplinary actions have been filed against the licensee during the seven-year period. If additional disciplinary actions were filed against the licensee during the seven-year period, all disciplinary actions shall be posted for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those accusations shall no longer be disclosed.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

SEC. 35. Section 7138 of the Business and Professions Code is amended to read:

7138. Notwithstanding any other provision of law, any fee paid in connection with any service or application covered by Section 7137 shall accrete to the Contractors' License Fund as an earned fee and shall not be refunded.

SEC. 36. Section 7141 of the Business and Professions Code is amended to read:

7141. Except as otherwise provided in this chapter, a license that has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the registrar, and payment of the appropriate renewal fee. Renewal under this section shall be effective on the date an acceptable renewal application is filed with the board. The licensee shall be considered unlicensed and there will be a break in the licensing time between the expiration date and the date the renewal becomes effective. If the license is renewed after the expiration date, the licensee shall also pay the delinquency fee prescribed by this chapter. If so renewed, the license shall continue in effect through the date provided in Section 7140 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within five years, the licensee shall make application for a license pursuant to Section 7066.

SEC. 37. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars ($300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996–97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or

attorneys' fees by judgment or by settlement agreement, shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, 2005, shall be transferred to the Court Reporters' Fund.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 8710.1 is added to the Business and Professions Code, to read:

8710.1. Protection of the public shall be the highest priority for the Board for Professional Engineers and Land Surveyors in exercising its licensing, regulatory, and disciplinary functions. Whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 39. Section 8762 of the Business and Professions Code is amended to read:

8762. (a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this

subdivision, a ''material discrepancy'' is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this

subdivision, ''filing data'' includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

SEC. 40. Section 8766 of the Business and Professions Code is amended to read:

8766. (a) Within 20 working days after receiving the record of survey, or within the additional time as may be mutually agreed upon by the land surveyor or civil engineer and the county surveyor, the county surveyor shall examine it with respect to all of the following:

(1) Its accuracy of mathematical data and substantial compliance with the information required by Section 8764.

(2) Its compliance with Sections 8762.5, 8763, 8764.5, 8771.5, and 8772.

(b) The examination pursuant to this section shall not require the licensed land surveyor or registered civil engineer submitting the record of survey to change the methods or procedures utilized or employed in the performance of the survey, nor shall the examination require a field survey to verify the data shown on the record of survey.

(c) Nothing in this section shall limit the county surveyor from including notes expressing opinions regarding the record of survey, or the methods or procedures utilized or employed in the performance of the survey.

(d) The examination pursuant to this section shall be performed by, or under the direct supervision of, a licensed land surveyor or registered civil engineer.

SEC. 41. Section 8773.2 of the Business and Professions Code is amended to read:

8773.2. (a) A ''corner record'' submitted to the county surveyor or engineer shall be examined by him or her for compliance with subdivision (d) of Section 8765 and Sections 8773, 8773.1, and 8773.4, endorsed with a statement of his or her examination, and filed with the county surveyor or returned to the submitting party within 20 working days after receipt.

(b) In the event the submitted ''corner record'' fails to comply with the examination criteria of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it together with a written statement of the changes necessary to make it conform to the requirements of subdivision (a). The licensed land surveyor or licensed civil engineer submitting the corner record may then make the agreed changes in compliance with subdivision (a) and note those matters that cannot be agreed upon in accordance with the provisions of subdivision (c), and shall resubmit the corner record within 60 days, or within the time as may be mutually agreed upon by the licensed land surveyor or licensed civil engineer and the county surveyor, to the county surveyor for filing pursuant to subdivision (c). The county surveyor or engineer

shall file the corner record within 10 working days after receipt of the resubmission.

(c) If the matters appearing on the corner record cannot be agreed upon by the licensed land surveyor or the licensed civil engineer and the county surveyor within 10 working days after the licensed land surveyor or licensed civil engineer resubmits and requests the corner record be filed without further change, an explanation of the differences shall be noted on the corner record and it shall be submitted to and filed by the county surveyor. The licensed land surveyor or licensed civil engineer filing the corner record shall attempt to reach agreement with the county surveyor regarding the language for the explanation of the differences. If they cannot agree on the language explaining the differences, then both shall add a notation on the corner record explaining the differences. The explanation of the differences shall be sufficiently specific to identify the factual basis for the differences.

(d) The corner record filed with the county surveyor of any county shall be securely fastened by him or her into a suitable book provided for that purpose.

(e) A charge for examining, indexing, and filing the corner record may be collected by the county surveyor, not to exceed the amount required for the recording of a deed.

(f) If the preparer of the corner record provides a postage-paid, self-addressed envelope or postcard with the filing of the corner record, the county surveyor shall return the postage-paid, self-addressed envelope or postcard to the preparer of the corner record with the filing data within 20 days of final filing. For the purposes of this subdivision, ''filing data'' includes the date, book or volume, and the page at which the corner record is filed by the county surveyor. This subdivision shall not apply to a county surveyor's office that maintains an electronic database of filed corner records that is accessible to the public by reference to the preparer's license number.

SEC. 42. Section 8773.4 of the Business and Professions Code is amended to read:

8773.4. (a) A corner record shall be signed by a licensed land surveyor or licensed civil engineer and stamped with his or her seal, or in the case of an agency of the United States government or the State of California, the certificate may be signed by the chief of the survey party making the survey, setting forth his or her official title, prior to filing.

(b) A corner record need not be filed when:

(1) A corner record is on file and the corner is found as described in the existing corner record.

(2) All conditions of Section 8773 are complied with by proper notations on a record of survey map filed in compliance with the

Professional Land Surveyors' Act or a parcel or subdivision map, in compliance with the Subdivision Map Act.

(3) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government Code.

(c) This section shall not apply to maps filed prior to January 1, 1974.

SEC. 43. Section 19825 of the Health and Safety Code is amended to read:

19825. Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address _____

_____

Address of Building _____

_____

Owner's Name if Known _____

Telephone No. _____

Contractor's Name _____

Contractor's Mailing Address _____

_____

Lic. No. _____

Architect or Engineer _____

Architect's or Engineer's Address _____

_____

Lic. No. _____

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor's Parcel Number* _____

Permit Date _____

Permit Number _____

Description of Work _____

Building Permit Valuation _____

*To be entered by issuing agency.

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____

Date _____ Contractor _____

OWNER–BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).):

☐ I, as owner of the property, or my employees with wagesas their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of provingthat he or she did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contractingwith licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).

☐ I am exempt under Sec. ____, B.& P.C. for this reason

_____

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

____ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permitis issued.

____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

____ I certify that, in the performance of the work for whichthis permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____ Applicant: _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a constructionlending agency for the performance of the work for which this permit isissued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and herebyauthorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Applicant or Agent Date

SEC. 44. 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 608

An act to amend Section 25404 of, to add Section 25504.1 to, and to add Article 10.01 (commencing with Section 25210.5) and Article 12.5 (commencing with Section 25249.1) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 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 Perchlorate Contamination Prevention Act.

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

(1) The State Department of Health Services, in the year 2000, reported detections of perchlorate in 44 public drinking water systems, with 23 systems indicating levels greater than 18 part per billion.

(2) This perchlorate contamination has been found statewide, including areas in Los Angeles, Pasadena, Riverside, Sacramento, San Bernardino, and Santa Clarita.

(3) Perchlorate can persist for many years in ground and surface water, and it is difficult to remove perchlorate with standard water treatment processes.

(4) Perchlorate has been found in scientific studies to disrupt thyroid hormone production, which hinders the body's ability to regulate its metabolism and physical growth.

(5) Pregnant women and their developing fetuses may suffer the most serious health effects from perchlorate contamination in drinking water, including improper thyroid functioning and inhibition of iodine intake.

(6) The Office of Environmental Health Hazard Assessment is proposing a public health goal within the range of 2 to 6 parts per billion of perchlorate in water.

(7) An awareness of the problem caused by perchlorate materials and wastes has increased and information has become available from investigation of groundwater contamination at various sites.

(8) Perchlorate materials and wastes are associated with, among other things, solid rocket propellants, explosives, fireworks, flares, airbags, and some fertilizers.

(9) The discharge of perchlorate waste into the environment through air, surface and subsurface soils, surface water and groundwater media is a threat to water supply and to wildlife habitat, such as wetlands.

(10) In light of the serious risks to public health and the environment posed by perchlorate releases resulting from the mismanagement of perchlorate and perchlorate-containing materials, the Department of Toxic Substances Control has indicated that it will reprioritize its existing regulatory resources to enable the expeditious assessment of existing standards, and the adoption of any additional standards determined to be necessary, for the management of waste perchlorate and perchlorate-containing wastes. The Department of Toxic Substances Control has also indicated that, should legislation be enacted requiring that nonwaste perchlorate and perchlorate-containing materials also be addressed as part of this assessment and regulations adoption process, this can be accomplished without additional resources.

(b) It is the intent of the Legislature to enact legislation to establish a continuing program for the purpose of preventing contamination from management of perchlorate material and from generation, storage, treatment, and disposal of perchlorate or perchlorate-containing waste relative to emissions into the air and subsequent deposition and runoff into surface water or groundwater, and direct or indirect discharge to surface soils, subsurface soils, surface water, or groundwater of the State of California.

SEC. 3. Article 10.01 (commencing with Section 25210.5) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.01. Management of Perchlorate

25210.5. For purposes of this article, the following definitions shall apply:

(a) Notwithstanding Section 25117.2, ''management'' means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) ''Perchlorate'' means all perchlorate-containing compounds.

(c) ''Perchlorate material'' means perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

25210.6. (a) On or before December 31, 2005, the department shall adopt regulations specifying best management practices for a person managing perchlorate materials. These practices may include, but are not limited to, all of the following:

(1) Procedures for documenting the amount of perchlorate materials managed by the facility.

(2) Management practices necessary to prevent releases of perchlorate materials, including, but not limited to, containment standards, usage, processing and transferring practices, and spill response procedures.

(b) (1) The department shall consult with the State Air Resources Board, the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Office of Emergency Services, the State Fire Marshal, and the California certified unified program agencies forum before adopting regulations pursuant to subdivision (a).

(2) The department shall also, before adopting regulations pursuant to subdivision (a), review existing federal, state, and local laws governing the management of perchlorate materials to determine the degree to which uniform and adequate requirements already exist, so as to avoid any unnecessary duplication of, or interference with the application of, those existing requirements.

(3) In adopting regulations pursuant to subdivision (a), the department shall ensure that those regulations are at least as stringent as, and to the extent practical consistent with, the existing requirements of Chapter 6.95 (commencing with Section 25500) and the Uniform Fire Code governing the management of perchlorate materials.

(c) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department.

(d) The department may implement an outreach effort to educate persons who manage perchlorate materials concerning the regulations promulgated pursuant to subdivision (a).

25210.7. On and after the effective date of the regulations adopted by the department pursuant to Section 25210.6, a person may not manage perchlorate materials unless the management complies with the best management practices specified in the regulations adopted by the department.

SEC. 4. Article 12.5 (commencing with Section 25249.1) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 12.5. The Perchlorate Contamination Prevention Program

25249.1. For the purposes of this article, the following definitions shall apply:

(a) ''Management'' means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) ''Perchlorate'' means all perchlorate-containing compounds.

(c) ''Perchlorate facility'' means all contiguous land, and the structures, appurtenances and improvements on the land, that has been used for the management of perchlorate material. A perchlorate facility may consist of one or more units, or combination of units, that is or has been used for the management of perchlorate material.

(d) ''Perchlorate material'' means perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

(e) ''Public drinking water well'' has the same meaning as defined in paragraph (1) of subdivision (a) of Section 25299.97.

25249.2. On or before July 1, 2004, the owner or operator of a perchlorate facility, located within a 5-mile radius of a public drinking water well that has been found by any state or local agency to be contaminated with perchlorate, shall submit to the Environmental Protection Agency a summary of any subsurface and any groundwater monitoring, investigation, or remediation work that has been performed at the facility. The owner or operator shall submit the information electronically, if it is available in electronic format.

SEC. 5. Section 25404 of the Health and Safety Code, as amended by Section 53 of Chapter 999 of the Statutes of 2002, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local 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 one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''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 a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Minor violation'' means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) ''Secretary'' means the Secretary for Environmental Protection.

(5) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and persons managing perchlorate materials.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order

under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1, and the requirements of any underground storage tank ordinance adopted by a city or county.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant

to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

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

SEC. 5.5. Section 25404 of the Health and Safety Code, as amended by Section 53 of Chapter 999 of the Statutes of 2002, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local 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 one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''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 a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Minor violation'' means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) ''Secretary'' means the Secretary for Environmental Protection.

(5) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and persons managing perchlorate materials.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of

Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

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

SEC. 6. Section 25404 of the Health and Safety Code, as added by Section 54 of Chapter 999 of the Statutes of 2002, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local 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 one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''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 a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Secretary'' means the Secretary for Environmental Protection.

(4) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(5) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified

program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and persons managing perchlorate materials.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of

subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1, and the requirements of any underground storage tank ordinance adopted by a city or county.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(f) This section shall become operative January 1, 2006.

SEC. 6.5. Section 25404 of the Health and Safety Code, as added by Section 54 of Chapter 999 of the Statutes of 2002, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local 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 one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''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 a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Secretary'' means the Secretary for Environmental Protection.

(4) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(5) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and persons managing perchlorate materials.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(f) This section shall become operative January 1, 2006.

SEC. 7. Section 25504.1 is added to the Health and Safety Code, to read:

25504.1. Notwithstanding any other law, including, but not limited to, the quantity limitations and exemptions specified in Section 25503.5, a business that handles any amount of perchlorate material, as defined

in subdivision (c) of Section 25210.5, shall prepare and submit to the administering agency a business plan pursuant to Section 25503.5 and an inventory form pursuant to Section 25509, both of which shall address all perchlorate materials handled by that business.

SEC. 8. Sections 5.5 and 6.5 of this bill incorporate amendments to Section 25404 of the Health and Safety Code proposed by both this bill and AB 1640. Sections 5.5 and 6.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 25404 of the Health and Safety Code, and (3) this bill is enacted after AB 1640, in which case Sections 5 and 6 of this bill shall not become operative.

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 or 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 609

An act to add Section 13385.1 to the Water Code, relating to water.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 13385.1 is added to the Water Code, to read:

13385.1. (a) (1) For the purposes of subdivision (h) of Section 13385, a ''serious violation'' also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

(2) Paragraph (1) applies only to violations that occur on or after January 1, 2004.

(b) (1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(c) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, ''effluent limitation'' means a numeric or numerically expressed narrative restriction on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants authorized to be discharged from a location that is specified in waste discharge requirements. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

CHAPTER 610

An act to amend Sections 206, 207, 208, 857, 1590, 1591, 2003, 2250, and 8282 of, to add Sections 6950.5, 6951, and 6957 to, and to repeal Article 3 (commencing with Section 6430) of Chapter 5 of, the Fish and Game Code, and to amend Sections 538, 5001.4, 5001.65, 5003.1, 5019.50, 5019.56, 5019.80, 36602, 36620, 36700, 36710, and 36725 of, and to add Section 36711 to, the Public Resources Code, and to amend Section 9 of Chapter 517 of the Statutes of 2002, relating to resources, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 206 of the Fish and Game Code is amended to read:

206. (a) In addition to, or in conjunction with, other regular or special meetings the commission shall, at least every three years, hold meetings in the first 10 days of August, October, November, and December for the purpose of considering and adopting revisions to regulations relating to fish, amphibians, and reptiles. The commission

shall alternate the locations of the August and December meetings between Los Angeles or Long Beach and Sacramento, and the October and November meetings between San Diego and Redding or Red Bluff.

(b) At the August meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the October and November meetings, the commission shall devote time for open public discussion of proposed regulations presented at the August meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the November meeting, the regulations it intends to add, amend, or repeal relating to fish, amphibia, and reptiles.

(d) At the December meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the August meeting regarding fish, amphibia, and reptiles it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 2. Section 207 of the Fish and Game Code is amended to read:

207. (a) In addition to, or in conjunction with, other regular or special meetings, the commission shall hold meetings in the first 10 days of the months of February, March, and April at least once every three years for the purpose of considering and adopting revisions to regulations relating to mammals. The commission shall alternate the location of the February meeting between Sacramento and Los Angeles or Long Beach. The commission shall alternate the location of the March meeting between San Diego and Redding or Red Bluff. The commission shall alternate the location of the April meeting between Sacramento and Los Angeles or Long Beach.

(b) At the February meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the March meeting, the commission shall devote time for open public discussion of proposed regulations presented at the February meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the

commission shall announce, prior to adjournment of the March meeting, the regulations it intends to add, amend, or repeal relating to mammals.

(d) At, or within 20 days after, the April meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendations received at the February meeting regarding mammals that it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 3. Section 208 of the Fish and Game Code is amended to read:

208. (a) In addition to, or in conjunction with, other regular or special meetings, the commission shall hold meetings in June and August at least once every three years for the purpose of considering and adopting revisions to regulations relating to resident game birds.

(b) At the June meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At, or within 20 days after, the August meeting, the commission shall devote time for open public discussion of proposed regulations presented at the June meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission, at, or within 20 days after, the August meeting, shall add, amend, or repeal regulations relating to any recommendation received at the June meeting regarding resident game birds that it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(d) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 4. Section 857 of the Fish and Game Code is amended to read:

857. (a) Notwithstanding any other provision of law, the status of a person as an employee, agent, or licensee of the department does not confer upon that person a special right or privilege to knowingly enter private land without either the consent of the owner or a search warrant, an inspection warrant.

(b) (1) Subdivision (a) does not apply to employees, agents, or licensees of the department in the event of an emergency. For purposes of this section, ''emergency'' means a sudden, unexpected occurrence, involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, wildlife, wildlife resources, or wildlife habitat.

(2) Subdivision (a) does not apply to a sworn peace officer authorized pursuant to subdivision (e) of Section 830.2 of the Penal Code or, if necessary for law enforcement purposes, to other departmental personnel accompanying a sworn peace officer. Subdivision (a) shall not be construed to define or alter any authority conferred on those peace officers by any other law or court decision.

(3) Subdivision (a) does not apply to, or interfere with, the authority of employees or licensees to enter and inspect land in conformance with Section 4604 of the Public Resources Code.

This section is not intended to expand or constrain the authority, if any, of employees, agents, or licensees of the department to enter private land to conduct inspections pursuant to Section 7702 of this code or Section 8670.5, 8670.7, or 8670.10 of the Government Code.

(c) If the department conducts a survey or evaluation of private land that results in the preparation of a document or report, the department shall, upon request and without undue delay, provide either a copy of the report or a written explanation of the department's legal authority for denying the request. The department may charge a fee for each copy, not to exceed the direct costs of duplication.

SEC. 5. Section 1590 of the Fish and Game Code is amended to read:

1590. The commission may designate, delete, or modify state marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas, as delineated in subdivision (a) of Section 36725 of the Public Resources Code. The commission shall consult with, and secure concurrence from, the State Park and Recreation Commission prior to modifying or deleting marine reserves and marine conservation areas designated by the State Park and Recreation Commission. The commission shall not delete or modify state marine recreational management areas designated by the State Park and Recreation Commission.

SEC. 6. Section 1591 of the Fish and Game Code is amended to read:

1591. (a) The Marine Managed Areas Improvement Act (Chapter 7 (commencing with Section 36600) of Division 27 of the Public Resources Code) establishes a uniform classification system for state marine managed areas and is incorporated herein by reference. Any proposals for marine protected areas made after January 1, 2002, shall follow the guidelines set forth in that act. Pursuant to Section 36750 of the Public Resources Code, all marine protected areas in existence and not reclassified in accordance with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3) on January 1, 2002, shall be reclassified by the State Interagency

Coordinating Committee established pursuant to Section 36800 of the Public Resources Code into one of the following classifications:

(1) State marine reserve.

(2) State marine park.

(3) State marine conservation area.

(b) State marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas shall be designated, deleted, or modified by the commission pursuant to that act. The restrictions and allowable uses applicable to those areas are as set forth in that act.

SEC. 7. Section 2003 of the Fish and Game Code is amended to read:

2003. (a) Except as specified in subdivisions (b) and (c), it is unlawful to offer any prize or other inducement as a reward for the taking of any game birds, mammals, fish, reptiles, or amphibians in an individual contest, tournament, or derby.

(b) The department may issue a permit to any person authorizing that person to offer a prize or other inducement as a reward for the taking of any game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons under the age of 16 years, or who are physically or mentally challenged, the primary purpose of the contest, tournament, or derby is to introduce young anglers to, or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to any person conducting what are generally known as frog-jumping contests or fish contests conducted in waters of the Pacific Ocean.

SEC. 8. Section 2250 of the Fish and Game Code is amended to read:

2250. It is unlawful to import or transport into or possess any live muskrat (genus Ondatra) in California except under permit issued by the department pursuant to Section 2118, or as otherwise provided by law. A county agricultural commissioner, fish and game deputy, or state plant quarantine officer may enter upon lands or waters west of the crest of the Cascade-Sierra Nevada mountain system, and west and south of the Tehachapi, Liebre, San Gabriel, San Bernadino, San Jacinto, Cuyamaca, and connected mountains south to the international boundary, or in any

watershed tributary to, or draining into, the Pacific Ocean to remove or destroy the muskrats.

SEC. 9. Article 3 (commencing with Section 6430) of Chapter 5 of the Fish and Game Code is repealed.

SEC. 10. Section 6950.5 is added to the Fish and Game Code, to read:

6950.5. ''Aquatic nuisance species'' means a nonindigenous species that threatens the viability or abundance of a native species, the ecological stability of waters inhabited by those species, or the viability of commercial, agricultural, aquacultural, or recreational activities that depend on those waters.

SEC. 11. Section 6951 is added to the Fish and Game Code, to read:

6951. The Legislature finds and hereby declares that the state's sport and commercial fisheries are resources of great economic and recreational importance. These resources are threatened by the introduction of aquatic organisms from foreign ports brought in by means of the ballast water of freighters and tankers. Several planktonic and benthic organisms, at least one of which is associated with the decline of an important striped bass food organism in the Sacramento-San Joaquin Estuary, have been introduced into the waters of the state with negative consequences. The introduction of eastern cordgrass into Humboldt Bay and many estuaries along the Pacific Coast has created a variety of problems. The introduction of harmful, nonindigenous organisms is occurring in other estuarine and coastal areas all along the West Coast, and has already taken place in other regions of the United States, including, but not limited to, the Great Lakes, with consequent harm to fisheries and ecosystems. Furthermore, ballast water may contain viruses and bacteria, and has, therefore, been recognized by the International Maritime Organization as a possible method of introducing diseases harmful to indigenous human, animal, and plant life. The Legislature therefore declares that the people of the state have a primary interest in the regulation of the dumping of ballast water originating in foreign ports in any river, estuary, bay, or coastal area of this state.

SEC. 12. Section 6957 is added to the Fish and Game Code, to read:

6957. The department shall work cooperatively with the State Lands Commission and the State Water Resources Control Board to implement the Ballast Water Management Program established pursuant to Division 36 (commencing with Section 71200) of the Public Resources Code.

SEC. 13. Section 8282 of the Fish and Game Code is amended to read:

8282. (a) Subject to this article and Article 1 (commencing with Section 9000) of Chapter 4, and subject to the regulation of the

commission authorized under subdivision (c), rock crab may be taken in traps in any waters of the state at any time, except in Districts 9, 19A, 19B, and 21 and those portions of District 20 lying on the north and east sides of Santa Catalina Island north of Southeast Rock. Rock crab (Cancer antennarius), red crab (Cancer productus), or yellow crab (Cancer anthonyi), which is less than $4^1/_4$ inches, measured in a straight line through the body, from edge of shell to edge of shell at the widest part, shall not be taken, possessed, bought, or sold.

(b) Any person taking rock crab shall carry a measuring device and shall measure any rock crab immediately upon removal from the trap. If the person determines that the rock crab is undersize, the person shall return it to the water immediately.

(c) Upon the recommendation of the director regarding rock crab fishery management measures, and following a public hearing on the matter, the commission may adopt regulations to manage the rock crab resource consistent with Part 1.7 (commencing with Section 7050).

SEC. 14. Section 538 of the Public Resources Code is amended to read:

538. The commission may designate, delete, or modify state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas, as delineated in subdivision (b) of Section 36725. The commission may not designate, delete, or modify a state marine reserve, state marine park, or state marine conservation area without the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources.

SEC. 15. Section 5001.4 of the Public Resources Code is amended to read:

5001.4. The department may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, state marine recreational management areas and, if requested by the State Water Resources Control Board, state water quality protection areas. Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department.

SEC. 16. Section 5001.65 of the Public Resources Code is amended to read:

5001.65. Commercial exploitation of resources in units of the state park system is prohibited. However, slant or directional drilling for oil or gas with the intent of extracting deposits underlying the Tule Elk State Reserve in Kern County is permissible in accordance with Section 6854. Commercial fishing is permissible, unless otherwise restricted, in state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas.

Qualified institutions and individuals shall be encouraged to conduct nondestructive forms of scientific investigation within state park system units, upon receiving prior approval of the director.

The taking of mineral specimens for recreational purposes from state beaches, state recreation areas, or state vehicular recreation areas is permitted upon receiving prior approval of the director.

SEC. 17. Section 5003.1 of the Public Resources Code is amended to read:

5003.1. The Legislature finds and declares that it is in the public interest to permit hunting, fishing, swimming, trails, camping, campsites, and rental vacation cabins in certain state recreation areas, or portions thereof, when it is found by the State Park and Recreation Commission that multiple use of state recreation areas would not threaten the safety and welfare of other state recreation area users. Hunting shall not be permitted in any unit now in the state park system and officially opened to the public on or before June 1, 1961, or in any unit hereafter acquired and designated by the commission as a state park, state marine reserve, state marine park, state reserve, state marine conservation area, or state marine cultural preservation area, and may only be permitted in new recreational areas and state marine recreational management areas that are developed for that use.

Whenever hunting or fishing is permitted in a state recreation area or state marine recreational management area, and whenever fishing is permitted in a state park, state marine park, state marine cultural preservation area, or state marine conservation area, the Department of Fish and Game shall enforce hunting and fishing laws and regulations as it does elsewhere in the state.

SEC. 18. Section 5019.50 of the Public Resources Code is amended to read:

5019.50. All units that are or shall become a part of the state park system, except those units or parts of units designated by the Legislature as wilderness areas pursuant to Chapter 1.3 (commencing with Section 5093.30), or where subject to any other provision of law, including Section 5019.80 and Article 1 (commencing with Section 36600) of Chapter 7 of Division 27, shall be classified by the State Park and Recreation Commission into one of the categories specified in this article. Classification of state marine reserves, state marine parks, and state marine conservation areas, requires the concurrence of the Fish and Game Commission for restrictions to be placed upon the use of living marine resources.

SEC. 19. Section 5019.56 of the Public Resources Code is amended to read:

5019.56. State recreation units consist of areas selected, developed, and operated to provide outdoor recreational opportunities. The units

shall be designated by the commission by naming, in accordance with Article 1 (commencing with Section 5001) and this article relating to classification.

In the planning of improvements to be undertaken within state recreation units, consideration shall be given to compatibility of design with the surrounding scenic and environmental characteristics.

State recreation units may be established in the terrestrial or nonmarine aquatic (lake or stream) environments of the state and shall be further classified as one of the following types:

(a) State recreation areas, consisting of areas selected and developed to provide multiple recreational opportunities to meet other than purely local needs. The areas shall be selected for their having terrain capable of withstanding extensive human impact and for their proximity to large population centers, major routes of travel, or proven recreational resources such as manmade or natural bodies of water. Areas containing ecological, geological, scenic, or cultural resources of significant value shall be preserved within state wildernesses, state reserves, state parks, or natural or cultural preserves, or, for those areas situated seaward of the mean high tide line, shall be designated state marine reserves, state marine parks, state marine conservation areas, or state marine cultural preservation areas.

Improvements may be undertaken to provide for recreational activities, including, but not limited to, camping, picnicking, swimming, hiking, bicycling, horseback riding, boating, waterskiing, diving, winter sports, fishing, and hunting.

Improvements to provide for urban or indoor formalized recreational activities shall not be undertaken within state recreation areas.

(b) Underwater recreation areas, consisting of areas in the nonmarine aquatic (lake or stream) environment selected and developed to provide surface and subsurface water-oriented recreational opportunities, while preserving basic resource values for present and future generations.

(c) State beaches, consisting of areas with frontage on the ocean, or bays designed to provide swimming, boating, fishing, and other beach-oriented recreational activities. Coastal areas containing ecological, geological, scenic, or cultural resources of significant value shall be preserved within state wildernesses, state reserves, state parks, or natural or cultural preserves, or, for those areas situated seaward of the mean high tide line, shall be designated state marine reserves, state marine parks, state marine conservation areas, or state marine cultural preservation areas.

(d) Wayside campgrounds, consisting of relatively small areas suitable for overnight camping and offering convenient access to major highways.

SEC. 20. Section 5019.80 of the Public Resources Code is amended to read:

5019.80. (a) The Marine Managed Areas Improvement Act (Chapter 7 (commencing with Section 36600) of Division 27) establishes a uniform classification system for state marine managed areas and is incorporated herein by reference. Any proposals for marine managed areas made after January 1, 2002, shall follow the guidelines set forth in that act. Pursuant to Section 36750, existing marine or estuarine areas within units of the state park system that have not been reclassified in accordance with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) on January 1, 2002, shall be reclassified by the State Interagency Coordinating Committee into one of the following classifications:

(1) State marine reserve.

(2) State marine park.

(3) State marine conservation area.

(4) State marine cultural preservation area.

(5) State marine recreational management area.

(b) The process for establishing, deleting, or modifying state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas shall be established pursuant to that act. The restrictions and allowable uses applicable to those areas are as set forth in that act.

SEC. 21. Section 36602 of the Public Resources Code is amended to read:

36602. The following definitions govern the construction of this chapter:

(a) ''Committee'' is the State Interagency Coordinating Committee established pursuant to Section 36800.

(b) ''Designating entity'' is the Fish and Game Commission, State Park and Recreation Commission, or State Water Resources Control Board, each of which has the authority to designate specified state marine managed areas.

(c) ''Managing agency'' is the Department of Fish and Game or the Department of Parks and Recreation, each of which has the authority to manage specified state marine managed areas.

(d) ''Marine managed area'' (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses. The resources and uses may include, but are not limited to, living marine resources and their habitats, scenic views, water quality, recreational values, and cultural or

geological resources. General areas that are administratively established for recreational or commercial fishing restrictions, such as seasonal or geographic closures or size limits, are not included in this definition. MMAs include the following classifications:

(1) State marine reserve, as defined in subdivision (a) of Section 36700.

(2) State marine park, as defined in subdivision (b) of Section 36700.

(3) State marine conservation area, as defined in subdivision (c) of Section 36700.

(4) State marine cultural preservation area, as defined in subdivision (d) of Section 36700.

(5) State marine recreational management area, as defined in subdivision (e) of Section 36700.

(6) State water quality protection areas, as defined in subdivision (f) of Section 36700.

(e) ''Marine protected area'' (MPA), consistent with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) is a named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs). MPAs include the following classifications:

(1) State marine reserve, as defined in subdivision (a) of Section 36700.

(2) State marine park, as defined in subdivision (b) of Section 36700.

(3) State marine conservation area, as defined in subdivision (c) of Section 36700.

SEC. 22. Section 36620 of the Public Resources Code is amended to read:

36620. The mission of the state MMA system is to ensure the long-term ecological viability and biological productivity of marine and estuarine ecosystems and to preserve cultural resources in the coastal sea, in recognition of their intrinsic value and for the benefit of current and future generations. In support of this mission, the Legislature finds and declares that there is a need to reexamine and redesign California's array of MMAs, to establish and manage a system using science and clear public policy directives to achieve all of the following objectives:

(a) Conserve representative or outstanding examples of marine and estuarine habitats, biodiversity, ecosystems, and significant natural and cultural features or sites.

(b) Support and promote marine and estuarine research, education, and science-based management.

(c) Help ensure sustainable uses of marine and estuarine resources.

(d) Provide and enhance opportunities for public enjoyment of natural and cultural marine and estuarine resources.

SEC. 23. Section 36700 of the Public Resources Code is amended to read:

36700. Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term ''marine'' is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A ''state marine reserve'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A ''state marine park'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:

(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.

(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.

(4) Preserve outstanding or unique geological features.

(c) A ''state marine conservation area'' is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(5) Preserve outstanding or unique geological features.

(6) Provide for sustainable living marine resource harvest.

(d) A ''state marine cultural preservation area'' is a nonterrestrial marine or estuarine area designated so the managing agency may preserve cultural objects or sites of historical, archaeological, or scientific interest in marine areas.

(e) A ''state marine recreational management area'' is a nonterrestrial marine or estuarine area designated so the managing agency may provide, limit, or restrict recreational opportunities to meet other than exclusively local needs while preserving basic resource values for present and future generations.

(f) A ''state water quality protection area'' is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process.

SEC. 24. Section 36710 of the Public Resources Code is amended to read:

36710. (a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and

public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

(d) In a state marine cultural preservation area, it is unlawful to damage, take, or possess any cultural marine resource. Complete integrity of the cultural resources shall be sought, and no structure or improvements that conflict with that integrity shall be permitted. No other use is restricted.

(e) In a state marine recreational management area, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted.

(f) In a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions. Nonpoint source pollution shall be controlled to the extent practicable. No other use is restricted.

SEC. 25. Section 36711 is added to the Public Resources Code, to read:

36711. The classifications contained in Section 36710 may not be inconsistent with United States military activities deemed mission critical by the United States military.

SEC. 26. Section 36725 of the Public Resources Code is amended to read:

36725. (a) The Fish and Game Commission may designate, delete, or modify state marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas. The Fish and Game Commission shall consult with, and secure concurrence from, the State Park and Recreation Commission prior to modifying or deleting state marine reserves and state marine conservation areas designated by the State Park and Recreation Commission. The Fish and Game Commission shall not delete or modify state marine recreational management areas designated by the State Park and Recreation Commission.

(b) The State Park and Recreation Commission may designate, delete, or modify state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. The State Park and Recreation Commission may not designate, delete, or modify a state marine reserve, state marine park, or state marine conservation area without the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources.

(c) If an unresolved conflict exists between the Fish and Game Commission and the State Park and Recreation Commission regarding a state marine reserve, state marine park, or state marine conservation area, the Secretary of the Resources Agency may reconcile the conflict.

(d) The State Water Resources Control Board may designate, delete, or modify state water quality protection areas.

(e) The Fish and Game Commission, State Park and Recreation Commission, and State Water Resources Control Board each may restrict or prohibit recreational uses and other human activities in the MMAs for the benefit of the resources therein, except in the case of restrictions on the use of living marine resources. Pursuant to this section, and consistent with Section 2860 of the Fish and Game Code, the Fish and Game Commission may regulate commercial and recreational fishing and any other taking of marine species in MMAs.

(f) (1) The Department of Fish and Game may manage state marine reserves, state marine conservation areas, state marine recreational management areas established for hunting purposes and, if requested by the State Water Resources Control Board, state water quality protection areas.

(2) The Department of Parks and Recreation may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department.

(3) The State Water Resources Control Board and the California regional water quality control boards may take appropriate actions to protect state water quality protection areas. The State Water Resources Control Board may request the Department of Fish and Game or the Department of Parks and Recreation to take appropriate management action.

SEC. 27. Section 9 of Chapter 517 of the Statutes of 2002 is amended to read:

Sec. 9. (a) The Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with the Imperial Irrigation District, Imperial County, and any other entities, organizations, and individuals

deemed appropriate by the secretaries of those two agencies, shall review and report to the Governor and the Legislature, on or before June 30, 2005, on all of the following:

(1) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1.

(2) Measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize as far as practicable those economic impacts.

(3) Whether and to what extent funds provided to the Imperial Irrigation District for transferred water under the Quantification Settlement Agreement, together with any other funds that have been made available for these purposes would mitigate those economic impacts.

(4) The amount of any additional funds required to mitigate the economic impacts.

(b) If the report required under this section indicates that additional funds are required, the report shall include recommendations to the Governor and the Legislature on all of the following:

(1) Proposed means for providing those additional funds, including, but not limited to, funding by the state.

(2) Formulation of a program to administer those funds in the most effective manner. The program shall be developed in consultation with the Departments of Finance, Food and Agriculture, and Water Resources, with the Imperial Irrigation District, and with any other entities deemed appropriate by the secretaries of the two agencies.

CHAPTER 611

An act to add Chapter 13 (commencing with Section 2930) to Division 3 of the Fish and Game Code, and to amend Section 9 of Chapter 617 of the Statutes of 2002, relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Chapter 13 (commencing with Section 2930) is added to Division 3 of the Fish and Game Code, to read:

CHAPTER 13. SALTON SEA RESTORATION ACT

2930. This chapter shall be known and may be cited as the Salton Sea Restoration Act.

2931. (a) It is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem.

(b) This restoration shall be based on the preferred alternative developed as a result of the restoration study and alternative selection process described in Section 2081.7 and using the funds made available in accordance with that section to be deposited in the Salton Sea Restoration Fund and other funds made available by the Legislature and the federal government.

(c) The preferred alternative shall provide the maximum feasible attainment of the following objectives:

(1) Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea.

(2) Elimination of air quality impacts from the restoration projects.

(3) Protection of water quality.

2932. There is hereby established the Salton Sea Restoration Fund which shall be administered by the director. Money deposited in the fund shall be expended, upon appropriation by the Legislature, for the following purposes:

(a) Environmental and engineering studies related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the sea.

(b) Implementation of conservation measures necessary to protect the fish and wildlife species dependent on the Salton Sea, including adaptive management measurements pursuant to Section 2081.7. These conservation measures shall be limited to the Salton Sea and lower Colorado River ecosystems, including the Colorado River Delta.

(c) Implementation of the preferred Salton Sea restoration alternative.

(d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

2933. The Department of Water Resources may contract with water suppliers to purchase and sell water made available pursuant to Section 1745.02 of the Water Code to achieve the goals of this chapter.

SEC. 2. Section 9 of Chapter 617 of the Statutes of 2002 is amended to read:

Sec. 9. (a) The Department of Food and Agriculture, if funds are appropriated for this purpose, and in consultation with the Imperial

Irrigation District, Imperial County, and any other entities, organizations, and individuals deemed appropriate by the Secretary of Food and Agriculture, shall review and report to the Governor and the Legislature, on or before June 30, 2005, on all of the following:

(1) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1.

(2) Measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize as far as practicable those economic impacts.

(3) Whether and to what extent funds provided to the Imperial Irrigation District for transferred water under the Quantification Settlement Agreement, together with any other funds that have been made available for these purposes would mitigate those economic impacts.

(4) The amount of any additional funds required to mitigate the economic impacts.

(b) If the report required under this section indicates that additional funds are required, the report shall include recommendations to the Governor and the Legislature on all of the following:

(1) Proposed means for providing those additional funds, including, but not limited to, funding by the state.

(2) Formulation of a program to administer those funds in the most effective manner. The program shall be developed in consultation with the Department of Finance, the Resources Agency, the Employment Development Department, the Imperial Irrigation District, Imperial Valley area governments, and any other entities deemed appropriate by the Secretary of Food and Agriculture.

SEC. 3. This act shall become operative only if SB 654 and SB 317 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.

CHAPTER 612

An act to amend Section 2081.7 of the Fish and Game Code and to amend Section 1013 of the Water Code, relating to the resources, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 2081.7 of the Fish and Game Code is amended to read:

2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and contingent upon the fulfillment of the conditions listed in subdivisions (b), (c), and (d), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species resulting from impacts attributable to the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of the act that added this section during the 2001–02 Regular Session, on all of the following:

(1) The salinity, elevation, shoreline habitat, or water quality of the Salton Sea.

(2) The quantity and quality of water flowing in the All American Canal, the Coachella Canal, the Imperial Valley and Coachella Valley drains, the New and Alamo Rivers, the Coachella Valley Stormwater Channel, and the habitat sustained by those flows.

(3) Agricultural lands in the Imperial Valley.

(4) The quantity and quality of water flowing in the Colorado River, the habitat sustained by those flows, and the collection of that water for delivery to authorized users.

(b) The Quantification Settlement Agreement is executed by the appropriate parties on or before October 12, 2003.

(c) The department has determined that the appropriate agreements have been executed to address environmental impacts at the Salton Sea that include enforceable commitments requiring all of the following:

(1) Imperial Irrigation District to transfer 800,000 acre-feet of conserved water, by conservation methods selected by the Imperial Irrigation District, to the Department of Water Resources on a mutually agreed upon schedule in exchange for payment of one hundred seventy-five dollars ($175) per acre-foot. The price shall be adjusted for inflation on an annual basis.

(2) Imperial Irrigation District to transfer up to 800,000 additional acre-feet of conserved water, by conservation methods selected by the Imperial Irrigation District, to the Department of Water Resources during the first 15 years of the Quantification Settlement Agreement on the schedule established for the mitigation water that was previously to be transferred to the San Diego Water Authority, or on a mutually agreed upon schedule, at no cost for the water in addition to the payment for the water from the mitigation fund described in paragraph (1) of subdivision (b) of Section 3 of Senate Bill 654 of the 2003–04 Regular Session.

(3) As a condition to acquisition of the water described in paragraph (1), the Department of Water Resources shall be responsible for any environmental impacts, including Salton Sea salinity, related to use or transfer of that water. As a condition to acquisition of the water described in paragraph (2), the Department of Water Resources shall be responsible for environmental impacts related to Salton Sea salinity that are related to the use or transfer of that water.

(4) The Metropolitan Water District of Southern California (MWD) to purchase up to 1.6 million acre-feet of the water provided in accordance with paragraphs (1) and (2) from the Department of Water Resources at a price of not less than two hundred fifty dollars ($250) per acre-foot on a mutually agreed upon schedule. The price shall be adjusted for inflation on an annual basis. The Department of Water Resources shall deposit all proceeds from the sale of water pursuant to this paragraph, after deducting costs and reasonable administrative expenses, into the Salton Sea Restoration Fund.

(5) The Metropolitan Water District of Southern California to pay not less than twenty dollars ($20) per acre-foot for all special surplus water received by MWD as a result of reinstatement of access to that water under the Interim Surplus Guidelines by the United States Department of Interior subtracting any water delivered to Arizona as a result of a shortage. The money shall be paid into the Salton Sea Restoration Fund. The price shall be adjusted for inflation on an annual basis. Metropolitan Water District of Southern California shall receive a credit against future mitigation obligations under the Lower Colorado River Multi-Species Conservation Plan for any funds provided under this paragraph to the extent that those funds are spent on projects that contribute to the conservation or mitigation for species identified in the Lower Colorado River Multi-Species Conservation Plan and that are consistent with the preferred alternative for Salton Sea restoration.

(6) Coachella Valley Water District, Imperial Irrigation District, and San Diego County Water Authority to pay a total of thirty million dollars ($30,000,000) to the Salton Sea Restoration Fund as provided in paragraph (2) of subdivision (b) of Section 3 of Senate Bill 654 of the 2003-04 Regular Session.

(d) All of the following conditions are met:

(1) The requirements of subdivision (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

(3) The take authorization provides for the development and implementation in cooperation with state and federal agencies of an adaptive management process that substantially contributes to the long-term conservation of the species for which take is authorized. Preparation of the adaptive management program and implementation of the program is the responsibility of the department. The department's obligation to prepare and implement the adaptive management program is conditioned upon the availability of funds pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), or other funds that may be appropriated by the Legislature or approved by the voters for that purpose. The failure to appropriate funds does not relieve the applicant of the obligations of paragraphs (1) and (2). However, the applicant shall not be required to fund any program pursuant to this paragraph.

(4) The requirements of paragraph (1) may be satisfied if the take is authorized under Chapter 10 (commencing with Section 2800).

(e) (1) The Secretary of the Resources Agency, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, shall undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The restoration study shall be conducted pursuant to a process with deadlines for release of the report and programmatic environmental documents established by the secretary, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, and the Salton Sea Advisory Committee. The secretary shall use all available authority to enter into a memorandum of understanding (MOU) with the Secretary of the Interior, as provided in Section 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372) for the purpose of obtaining federal participation in the restoration of the Salton Sea.

(2) The restoration study shall establish all of the following:

(A) An evaluation of and suggested criteria for the selection of alternatives that will allow for consideration of a range of alternatives including, but not limited to, an alternative designed to sustain avian biodiversity at the Salton Sea, but not maintain elevation for the whole sea, an alternative to maintain salinity at or below current conditions and elevation near 230 feet below mean sea level under a variety of inflow conditions, and a most cost-effective technical alternative.

(B) An evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative evaluated.

(C) A recommended plan for the use or transfer of water provided by paragraph (2) of subdivision (c). No water may be transferred pursuant

to that subdivision unless the secretary finds that transfer is consistent with the preferred alternative for Salton Sea restoration.

(D) The selection of a preferred alternative consistent with Section 2931, including a proposed funding plan to implement the preferred alternative.

(3) The study identifying the preferred alternative shall be submitted to the Legislature on or before December 31, 2006.

(4) The Secretary of the Resources Agency shall establish an advisory committee for purposes of this subdivision as follows:

(A) The advisory committee shall be selected to provide balanced representation of the following interests:

(i) Agriculture.

(ii) Local governments.

(iii) Conservation groups.

(iv) Tribal governments.

(v) Recreational users.

(vi) Water agencies.

(vii) Air pollution control districts.

(B) Appropriate federal agency representatives may be asked to serve in an ex officio capacity.

(C) The Resources Agency shall consult with the advisory committee throughout all stages of the alternative selection process.

(f) This section shall not be construed to exempt from any other provision of law the Quantification Settlement Agreement and the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998.

SEC. 2. Section 1013 of the Water Code is amended to read:

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Section 1 of the act amending this section during the 2001–02 Regular Session, ''land fallowing conservation measures'' means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of

whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement and its water delivery obligations under subdivision (c) of Section 2081.7 of the Fish and Game Code, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:

(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

(h) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 3. This act shall only become operative if SB 277 and SB 654 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.

CHAPTER 613

An act to amend Section 12562 of the Water Code, and to amend Section 1 of Chapter 617 of the Statutes of 2002, relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 12562 of the Water Code is amended to read:

12562. (a) (1) In furtherance of implementing and achieving the goals of the ''California Plan,'' the sum of two hundred million dollars ($200,000,000) in the account shall be used by the director to finance and arrange for lining portions of the All American Canal and the Coachella Branch of the All American Canal.

(2) The canal lining projects shall be completed not later than December 31, 2008, or such later date as may be required by extraordinary circumstances.

(3) The allocation of the water conserved from the canal lining projects and to be made available to the Metropolitan Water District of Southern California shall be consistent with federal law and shall be

determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the director and the United States Secretary of the Interior.

(b) (1) The sum of thirty-five million dollars ($35,000,000) from the account shall be used by the director to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the ''California Plan.''

(2) Water stored in connection with the groundwater conjunctive use programs described in paragraph (1) shall be for the benefit of the member public agencies of the Metropolitan Water District of Southern California.

(3) Nothing in this subdivision limits the ability of the Metropolitan Water District of Southern California to enter into agreements regarding the sharing of any water made available under this subdivision.

(c) The Legislature finds that the extension of the date from December 31, 2006, to December 31, 2008, for completing the canal project linings under paragraph (2) of subdivision (a) during the 2003 portion of the 2003–04 Regular Session is required due to extraordinary circumstances. The Legislature finds that there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications for lining the All American Canal and the Coachella Branch of the All American Canal, and that these circumstances are extraordinary.

SEC. 2. Section 1 of Chapter 617 of the Statutes of 2002 is amended to read:

Section 1. (a) ''Quantification Settlement Agreement'' means the agreement, the provisions of which are substantially described in the draft Quantification Settlement Agreement (QSA), dated December 12, 2000, and submitted for public review by the Quantification Settlement Agreement parties, and as it may be amended, and that shall include as a necessary component the implementation of the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998 (IID/SDCWA Transfer Agreement), and as it may be amended, and any QSA-related program that delivers water at the intake of the Metropolitan Water District of Southern California's Colorado River Aqueduct.

(b) It is the intent of the Legislature to allocate fifty million dollars ($50,000,000) from funds available pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held

November 5, 2002 (Proposition 50), as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources to prepare the restoration study, to assist in the implementation of the preferred alternative or other related restoration activities, including the program referred to in paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and Game Code, at the Salton Sea or the lower Colorado River, or to assist in the development of a natural community conservation plan that is consistent with the initiative and that is implemented to effectuate the QSA.

(c) The Legislature finds that it is important to the state to meet its commitment to reduce its use of water from the Colorado River to 4.4 million acre-feet per year. The Legislature further finds that it is important that actions taken to reduce California's Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the state. The Legislature further finds that species previously designated as fully protected may be taken incidental to activities intended to meet the state's commitment to reduce its use of Colorado River water as long as those activities are found to comply with existing law, including Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(d) California's Colorado River Water Use Plan is a framework developed to allow California to meet its Colorado River needs from within its basic annual apportionment. California will be required to reduce the amount of Colorado River water it uses by up to 800,000 acre-feet per year.

(e) California's basic apportionment of Colorado River water is 4.4 million acre-feet per year, but until recently, due to the availability of surplus river water and apportioned but unused water of Nevada and Arizona, California has used up to 5.2 million acre-feet per year over the past ten years. About 700,000 acre-feet of this additional water has been used to fill the Colorado River Aqueduct, which transports water to the southern California urban coast. Nevada and Arizona are now using, or are close to using, their full apportionments, and California can no longer rely on that surplus of water.

(f) The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented. The transfer of water from the Imperial Irrigation District to the San Diego County Water Authority and the other Quantification Settlement Agreement (QSA) parties pursuant to the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

(g) Restoration of the Salton Sea is in the state and national interest. Congress recognized in the Salton Sea Reclamation Act of 1998, Public Law 105-372, that appropriate federal agencies should offer alternative restoration options to Congress and the public in order to avoid further

deterioration of the internationally significant habitat and wildlife values of the Salton Sea and to protect the wide array of economic and social values that exist in the immediate vicinity of the Salton Sea. The failure to issue that report in a timely fashion has unnecessarily constrained the Legislature's ability to consider fully the costs and benefits of various options to restoration that should be undertaken at the Salton Sea.

SEC. 3. The Legislature hereby finds and declares that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, as follows:

(a) Notwithstanding any other provision of law, the Department of Fish and Game may enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements. The Director of the Department of Fish and Game or his or her designee shall chair the authority created by the joint powers agreement. The joint powers agreement shall include the following agencies:

(1) Coachella Valley Water District.

(2) Imperial Irrigation District.

(3) San Diego County Water Authority.

(b) Costs for environmental mitigation requirements shall be allocated based on an agreement among Imperial Irrigation District, the Coachella Valley Water District, the San Diego County Water Authority and the Department of Fish and Game and shall include the following:

(1) Costs up to, and not to exceed, one hundred thirty-three million dollars ($133,000,000) shall be paid by the Imperial Irrigation District, the Coachella Valley Water District, and the San Diego County Water Authority for environmental mitigation requirements. Those costs may be paid to a joint powers authority established pursuant to this section. The amount of the obligation established in this paragraph shall be adjusted for inflation.

(2) Thirty million dollars ($30,000,000) shall be paid by the Imperial Irrigation District, Coachella Valley Water District, and the San Diego County Water Authority to the Salton Sea Restoration Fund as provided in paragraph (6) of subdivision (c) of Section 2081.7 of the Fish and Game Code. This amount shall be adjusted for inflation.

(c) Except for the requirements of subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and the provisions of subdivision (b), no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea shall be required of the Imperial Irrigation District, the

Coachella Valley Water District, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, including federal cost-sharing or other federal requirements. Any future state actions to restore the Salton Sea will be the sole responsibility of the State of California.

(d) As used in this section, ''environmental mitigation requirements'' means any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the Imperial Irrigation District Water Conservation and transfer project certified by the Imperial Irrigation District on June 28, 2002, as modified and supplemented by the addendum thereto prepared to assess subsequent revisions to the Quantification Settlement Agreement, but excluding measures required to address environmental impacts:

(1) Within the service areas of the Coachella Valley Water District, other than impacts related to the Salton Sea, the San Diego County Water Authority, and the Metropolitan Water District of Southern California.

(2) Associated with the All American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.

(e) As used in this section, ''environmental review process'' means any of the following:

(1) The conducting of any required environmental review or assessment, or both.

(2) The obtaining of any permit, authorization, opinion, assessment or agreement.

(3) The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water Code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

(f) As used in this section, ''environmental review process'' does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

SEC. 4. This act shall become operative only if SB 277 and SB 317 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.

CHAPTER 614

An act to amend Sections 13271 and 13304 of, and to add Chapter 8.5 (commencing with Section 13610) to Division 7 of, the Water Code, relating to resources.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. Section 13271 of the Water Code is amended to read:

13271. (a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public

agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) (1) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, ''sewage'' means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(2) A collection system owner or operator, as defined in paragraph (1) of subdivision (a) of Section 13193, in addition to the reporting requirements set forth in this section, shall submit a report pursuant to subdivision (c) of Section 13193.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section

shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

(h) For the purposes of this section, the reportable quantity for perchlorate shall be 10 pounds or more by discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted pursuant to subdivision (e).

SEC. 2. Section 13304 of the Water Code is amended to read:

13304. (a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(b) (1) The regional board may expend available money to perform any cleanup, abatement, or remedial work required under the circumstances set forth in subdivision (a), including, but not limited to, supervision of cleanup and abatement activities that, in its judgment, is required by the magnitude of the endeavor or the urgency for prompt action to prevent substantial pollution, nuisance, or injury to any waters of the state. The action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought.

(2) The regional board may perform the work itself, or with the cooperation of any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the regional board may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the

furnishing of labor and materials necessary to accomplish the work. The contracts are not subject to approval by the Department of General Services.

(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(4) The regional board may contract with a water agency to perform, under the direction of the regional board, investigations of existing or threatened groundwater pollution or nuisance. The agency's cost of performing the contracted services shall be reimbursed by the regional board from the first available funds obtained from cost recovery actions for the specific site. The authority of a regional board to contract with a water agency is limited to a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin.

(c) (1) If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(2) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, that identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner

released or otherwise discharged. Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the state board on behalf of the regional board for a money judgment. Money recovered by a judgment in favor of the state board shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(d) If, despite reasonable effort by the regional board to identify the person responsible for the discharge of waste or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work is required to be performed, the regional board is not required to issue an order under this section.

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

(f) Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

(g) (1) Any public water supplier or private well owner receiving replacement water by reason of an order issued pursuant to subdivision (a), or any person or entity who is ordered to provide replacement water pursuant to subdivision (a), may request nonbinding mediation of all replacement water claims.

(2) If so requested, the public water suppliers receiving the replacement water and the persons or entities ordered to provide the replacement water, within 30 days of the submittal of a water replacement plan, shall engage in at least one confidential settlement discussion before a mutually acceptable mediator.

(3) Any agreement between parties regarding replacement water claims resulting from participation in the nonbinding mediation process shall be consistent with the requirements of any cleanup and abatement order.

(4) A regional board or the state board is not required to participate in any nonbinding mediation requested pursuant to paragraph (1).

(5) The party or parties requesting the mediation shall pay for the costs of the mediation.

(h) As part of any cleanup and abatement order that requires the provision of replacement water, a regional board or the state board shall request a water replacement plan from the discharger in cases where

replacement water is to be provided for more than 30 days. The water replacement plan is subject to the approval of the regional board or the state board prior to its implementation.

(i) A ''water replacement plan'' means a plan pursuant to which the discharger will provide replacement water in accordance with a cleanup and abatement order.

(j) This section does not impose any new liability for acts occurring before January 1, 1981, if the acts were not in violation of existing laws or regulations at the time they occurred.

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

(*l*) The Legislature declares that the amendments made to subdivision (a) of this section by Senate Bill 1004 of the 2003–04 Regular Session do not constitute a change in, but are declaratory of, existing law.

SEC. 3. Chapter 8.5 (commencing with Section 13610) is added to Division 7 of the Water Code, to read:

CHAPTER 8.5. PERCHLORATE

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) ''Perchlorate'' means all perchlorate-containing compounds, including ammonium, potassium, magnesium, and sodium perchlorate not found on or after January 1, 2004, in unused military munitions as defined in Section 260.10 of Title 40 of the Code of Federal Regulations.

(b) Subject to Section 13610.5, ''perchlorate storage facility'' means a facility, not including a military munitions storage facility within a military installation that meets the Department of Defense Explosive Safety Board requirements set forth in DOD 605.9-STD, that stores over 500 pounds of perchlorate in any calendar year.

(c) For the purposes of this section, ''military munitions storage facility'' does not include the entire military installation within which the military munitions storage facility is located.

13610.5. This chapter does not apply to the following:

(a) A facility that stores perchlorate for retail purposes or for law enforcement purposes.

(b) Drinking water storage reservoirs.

13611. (a) The notification required by Section 13611.5 does not apply to a discharge that is in compliance with this division, or to a water agency conveying water in compliance with all state and federal drinking water standards.

(b) Any person who fails to provide the notifications required by Section 13271 relating to perchlorate or by Section 13611.5 may be civilly liable in accordance with subdivision (c).

(c) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation described in subdivision (b) in an amount that does not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 11350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation described in subdivision (b) in an amount that is not less than five hundred dollars ($500), or more than five thousand dollars ($5,000), for each day in which the violation occurs.

(d) Notwithstanding Section 13341, all money collected by the state pursuant to this section shall be available to the state board upon appropriation by the Legislature.

13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the owner or operator has met the alternative compliance requirements of subdivision (b), an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate shall submit to the state board, to the extent feasible, all of the following information:

(1) The volume of perchlorate stored each year.

(2) The method of storage.

(3) The location of storage. To the extent authorized by federal law, in the case of a perchlorate storage facility under the control of the Armed Forces of the United States, ''location'' means the name and address of the property within which the perchlorate storage facility is located.

(4) Copies of documents relating to any monitoring undertaken for potential leaks into the water bodies of the state.

(b) The owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this section if both of the following conditions are met:

(1) The owner or operator has provided substantially similar information as required pursuant to subdivision (a) to a state, local, or federal agency pursuant to any of the following:

(i) An order issued by a regional board pursuant to Chapter 5 (commencing with Section 13300) of Division 7.

(ii) An order, consent order, or consent decree issued or entered into by the Department of Toxic Substances Control pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(iii) An an order, consent order, or consent decree issued or entered into by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(iv) The requirement under Section 25504.1 of the Health and Safety Code, as added by Assembly Bill 826 of the 2003–04 Regular Session.

(2) The owner or operator, on or before January 1, 2005, and annually thereafter, notifies the state board of the governmental entity to which the information is provided and the state board determines the information supplied is substantially similar as the information required to be reported pursuant to subdivision (a). In the case of any information submitted to a federal or local agency, the state board may require the owner or operator, in addition, to submit that information to the state board if the state board determines that the information is not otherwise reasonably available to the state board.

(c) This section shall not be administered or implemented if the state board receives notification from the Secretary for Environmental Protection pursuant to Section 13613 that the Secretary for Environmental Protection has established a database that is able to receive perchlorate inventory information.

(d) Information on perchlorate storage need only be submitted pursuant to this section one time, unless information originally submitted pursuant to this section has changed.

13612. (a) The state board shall publish and make available to the public on or before January 1, 2006, a list of past and present perchlorate storage facilities within the state. The state board may charge an annual fee to each owner of a storage facility that provides information to the board for that purpose, which fee shall not exceed one hundred dollars ($100) for each year information is provided. The fees shall be deposited in the State Water Quality Control Fund, and notwithstanding any other provision of law, shall be available to the state board upon appropriation by the Legislature.

(b) The state board shall compile and maintain centrally all information obtained pursuant to Section 13611.5. The information shall be available for public review.

13613. Upon notification from the Secretary for Environmental Protection that he or she has established a database that is able to receive perchlorate inventory information pursuant to paragraph (2) of subdivision (e) of Section 25404 of the Health and Safety Code, the state board shall submit to the Secretary for Environmental Protection all perchlorate storage information obtained pursuant to Section 13611.5.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 615

An act to add Sections 20035.4, 20035.5, 20035.9, 22825.12, and 22825.19 to the Government Code, relating to state employees.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve agreements pursuant to Section 3517 of the Government Code entered into by the state employer and recognized employee organizations.

SEC. 2. The provisions of the memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the following employee organizations, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code:

(a) State Bargaining Unit 1, the California State Employees Association.

(b) State Bargaining Unit 4, the California State Employees Association.

(c) State Bargaining Unit 10, California Association of Professional Scientists.

(d) State Bargaining Unit 11, the California State Employees Association.

(e) State Bargaining Unit 14, the California State Employees Association.

(f) State Bargaining Unit 15, the California State Employees Association.

(g) State Bargaining Unit 16, the Union of American Physicians and Dentists.

(h) State Bargaining Unit 17, the California State Employees Association.

(i) State Bargaining Unit 19, the American Federation of State, County, and Municipal Employees.

(j) State Bargaining Unit 20, the California State Employees Association.

(k) State Bargaining Unit 21, the California State Employees Association.

SEC. 3. The provisions of the memoranda of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2003, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. If funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 20035.4 is added to the Government Code, to read:

20035.4. Notwithstanding Sections 20035 and 20037, ''final compensation,'' for the purpose of determining any pension or benefit with respect to a member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 16, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This section shall only apply if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of ''final compensation'' provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 6. Section 20035.5 is added to the Government Code, to read:

20035.5. Notwithstanding Sections 20035 and 20037, ''final compensation,'' for the purpose of determining any pension or benefit with respect to a member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 19, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This section shall only apply if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any,

that may result from the application of the definition of ''final compensation'' provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 7. Section 20035.9 is added to the Government Code, to read:

20035.9. (a) Notwithstanding Sections 20035 and 20037, ''final compensation,'' for the purpose of determining any pension or benefit with respect to a state miscellaneous member (1) who retires or dies on or after July 1, 2003, (2) who was a member of a state bargaining unit listed in subdivision (b), and (3) whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered into during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This section shall apply only if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of ''final compensation'' provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

(b) The section shall apply with respect to members in State Bargaining Units 1, 4, 10, 11, 14, 15, 17, 20, and 21.

SEC. 8. Section 22825.12 is added to the Government Code, to read:

22825.12. (a) Notwithstanding Section 22825.1, subdivision (b) of Section 22825.15, or any other provision of this article, the employer's contribution with respect to employees in State Bargaining Unit 16 and State Bargaining Unit 19 shall be as described in paragraphs (1) and (2). To be eligible for this contribution, the employee must be enrolled in an approved health benefits plan.

(1) From January 1, 2004, to December 31, 2005, inclusive, the employer's contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefits plan premium for an active state civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(2) From and after January 1, 2006, the employer's contribution for each employee shall be an amount equal to 85 percent of the weighted

average of the basic health benefits plan premium for an active state civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(b) The employer is not obligated to make a contribution under this section for any employee unless and until the effective date of the employee's enrollment in an approved health benefits plan.

(c) The contribution of each employee and annuitant under this section shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 9. Section 22825.19 is added to the Government Code, to read:

22825.19. (a) Notwithstanding Section 22825.1, subdivision (b) of Section 22825.15, or any other provision of this article, the employer's contribution with respect to employees in the following state bargaining units shall be as described in subdivision (b): State Bargaining Units 1, 4, 10, 11, 14, 15, 17, 20, and 21. To be eligible for this contribution, the employee must be enrolled in an approved health benefits plan.

(b) Effective January 1, 2004, the employer's contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefits plan premium for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active

state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer is not obligated to make a contribution under this section for any employee unless and until the effective date of the employee's enrollment in an approved health benefits plan.

(d) The contribution of each employee and annuitant under this section shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 10. 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 616

An act to add Sections 20035.10 and 22825.10 to the Government Code, relating to state employees.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organization.

SEC. 2. (a) Except as otherwise specified in subdivisions (b) and (c), the provisions of the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the following employee organization, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code:

State Bargaining Unit 9, the Professional Engineers in California Government.

(b) (1) The Legislature hereby approves the provisions of the memorandum of understanding for State Bargaining Unit 9 that requires the expenditure of funds, except for that portion of that memorandum of understanding that authorizes the increase of salary or compensation for parity reasons, as based in part upon the results of the salary survey of professional engineering benchmarks performed by the Department of Personnel Administration, as described in that memorandum of understanding.

(2) It is the intent of the Legislature that the Legislature's approval of the provisions of the memorandum of understanding for State Bargaining Unit 9 that are not approved by this act, as described in this subdivision, be considered at such time as the salary survey described in that subdivision has been completed and submitted to the Legislature for its consideration.

SEC. 3. The provisions of the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2003, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. If funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 20035.10 is added to the Government Code, to read:

20035.10. (a) Notwithstanding Sections 20035 and 20037, ''final compensation'' for the purpose of determining any pension or benefit with respect to a state miscellaneous member (1) who retires or dies on or after July 1, 2003, (2) who was a member of the state bargaining unit listed in subdivision (b), and (3) whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered into during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This section shall apply only if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of ''final compensation'' provided

in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

(b) The section shall apply with respect to members in State Bargaining Unit 9.

SEC. 6. Section 22825.10 is added to the Government Code, to read:

22825.10. (a) Notwithstanding Section 22825.1, subdivision (b) of Section 22825.15, or any other provision of this article, the employer's contribution with respect to employees in the following state bargaining unit shall be as described in subdivision (b): State Bargaining Unit 9. To be eligible for this contribution, the employee must be enrolled in an approved health benefits plan.

(b) Effective January 1, 2004, the employer's contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefits plan premium for an active state civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer is not obligated to make a contribution under this section for any employee unless and until the effective date of the employee's enrollment in an approved health benefits plan.

(d) The contribution of each employee and annuitant under this section shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

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CHAPTER 617

An act to amend Sections 20035.1 and 21363.4 of, and to add Sections 20035.2, 20035.3, and 22825.11 to, the Government Code, relating to state employees.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve addenda to agreements pursuant to Section 3517 of the Government Code entered into by the state employer and State Bargaining Units 5 and 8.

SEC. 2. The provisions of the addenda to the memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and State Bargaining Unit 5, the California Association of Highway Patrol, and State Bargaining Unit 8, the CDF-Firefighters, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. The provisions of the addenda to the memoranda of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2003, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any addendum to a memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the addendum are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5.

SEC. 5. Section 20035.1 of the Government Code is amended to read:

20035.1. For patrol members in State Bargaining Unit 5, patrol members excepted from the definition of ''state employee'' in subdivision (c) of Section 3513, and patrol members who are officers or employees of the executive branch of state government who are not members of the civil service, the member's final compensation shall be increased as follows:

(a) For a member who retires or dies on or after July 1, 2001, and prior to July 1, 2004, the member's final compensation for patrol service subject to Section 21362.2 shall be increased by one-half of the normal rate of contribution specified in subdivision (a) of Section 20681.

(b) For a member who retires or dies on or after July 1, 2004, the member's final compensation for patrol service subject to Section 21362.2 shall be increased by the normal rate of contribution specified in subdivision (a) of Section 20681.

SEC. 6. Section 20035.2 is added to the Government Code, to read:

20035.2. Notwithstanding Sections 20035 and 20037, ''final compensation'' for the purpose of determining any pension or benefit with respect to a patrol member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 5, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to an addendum to a memorandum of understanding entered during the 2003–04 fiscal year, ''final compensation'' means the highest annual compensation the patrol member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This subdivision shall only apply if the period during which the patrol member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of ''final compensation'' provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 7. Section 20035.3 is added to the Government Code, to read:

20035.3. Notwithstanding Sections 20035 and 20037, ''final compensation'' for the purpose of determining any pension or benefit with respect to a state miscellaneous or peace officer/firefighter member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 8, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to an addendum to a memorandum of understanding entered during the 2003–04 fiscal year, ''final compensation'' means the highest annual compensation the member would have earned as of July 1, 2003, if that 5 percent reduction had not occurred. This subdivision shall only apply if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of ''final compensation'' provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 8. Section 21363.4 of the Government Code is amended to read:

21363.4. (a) Upon attaining the age of 50 years or more, the combined current and prior service pension for a state peace officer/firefighter member described in subdivision (c) who retires or dies on or after January 1, 2006, is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement to equal 3 percent of his or her final compensation at retirement, multiplied by the number of years of state peace officer/firefighter service, as defined in subdivision (d), subject to this section with which he or she is credited at retirement.

(b) For state peace officer/firefighter members, with respect to service for all state employers under this section, the current service pension and the combined current and prior service pension under this section shall not exceed an amount that, when added to the service retirement annuity related to that service, equals 90 percent of final compensation. If the pension relates to service to more than one employer and would otherwise exceed that maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to that employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum.

(c) For purposes of this section, ''state peace officer/firefighter member'' means state peace officer/firefighter members under this part who, on or after January 1, 2006, are employed by the state and are members of State Bargaining Unit 6 or State Bargaining Unit 8, and may include state peace officer/firefighter members in related managerial, supervisory, or confidential positions and officers or employees of the executive branch of state government who are not members of the civil service, provided the Department of Personnel Administration has approved their inclusion in writing to the board.

(d) For purposes of this section, ''state peace officer/firefighter service'' means service performed by a state peace officer/firefighter member while a member of State Bargaining Unit 6 or State Bargaining Unit 8, and may include state peace officer/firefighter service in related managerial, supervisory, or confidential positions or as officers or employees of the executive branch of state government who are not members of the civil service, provided the Department of Personnel Administration has approved their inclusion in writing to the board.

(e) This section shall supersede Section 21363 or 21363.1, whichever is applicable, with respect to state peace officer/firefighter members and service as defined herein.

(f) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial

disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier ages of service retirement made possible by the benefits under this section.

SEC. 9. Section 22825.11 is added to the Government Code, to read:

22825.11. (a) Notwithstanding Section 22825.1, subdivision (b) of Section 22825.15, or any other provision of this article, the employer's contribution with respect to employees in State Bargaining Unit 5 and State Bargaining Unit 8 shall be as described in paragraphs (1) and (2). To be eligible for this contribution, the employee must be enrolled in an approved health benefits plan.

(1) From January 1, 2004, to December 31, 2005, inclusive, the employer's contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefits plan premium for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(2) From and after January 1, 2006, the employer's contribution for each employee shall be an amount equal to 85 percent of the weighted average of the basic health benefits plan premium for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefits plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(b) The employer is not obligated to make a contribution under this section for any employee unless and until the effective date of the employee's enrollment in an approved health benefits plan.

(c) The contribution of each employee and annuitant under this section shall be the total cost per month of the benefit coverage afforded

him or her under the plan or plans less the portion thereof to be contributed by the employer.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 618

An act to amend Section 13848.6 of the Penal Code, relating to crime.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. 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, with the exception of crimes that occur on state property or are committed against state employees, 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 wire line 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 Technology Crime Investigation 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 Competitive Telecommunication Companies. This position shall rotate every other year between designees of the two associations.

(16) A representative of the California banking industry.

(17) A representative of the Office of Privacy Protection.

(18) A representative of the Department of Finance.

(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) Each regional task force shall be identified by a name that is appropriate to the area that it serves. 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) The California High Technology Crimes Task Force shall be comprised of each regional task force developed pursuant to this subdivision.

(5) 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.

(6) 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 California High Technology Crimes Task Force 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.

CHAPTER 619

An act to amend Section 11383 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 11383 of the Health and Safety Code is amended to read:

11383. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(b) Any person who possesses at the same time any of the following combinations, or a combination product thereof, with intent to manufacture phencyclidine (PCP) or any of its analogs specified in paragraph (22) of subdivision (d) of Section 11054 or paragraph (3) of subdivision (e) of Section 11055 is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(c) (1) Any person who, with intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who, with intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(d) For purposes of this section, a ''reducing agent'' for the purposes of manufacturing methamphetamine means an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

(e) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with intent to manufacture any of the following controlled substances is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N–ethylamphetamine.

(4) Phencyclidine (PCP).

(5) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(f) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, piperidine, cyclohexanone, pyrrolidine, morpholine, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(g) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(h) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, or morpholine ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(i) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

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 620

An act to amend Section 11379.6 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 11379.6 of the Health and Safety Code is amended to read:

11379.6. (a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment in the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000).

(b) Except when an enhancement pursuant to Section 11379.7 is pled and proved, the fact that a person under 16 years of age resided in a structure in which a violation of this section involving methamphetamine occurred shall be considered a factor in aggravation by the sentencing court.

(c) Except as otherwise provided by law, every person who offers to perform an act which is punishable under subdivision (a) shall be punished by imprisonment in the state prison for three, four, or five years.

(d) All fines collected pursuant to subdivision (a) shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account, as established by Section 5 of Chapter 1295 of the Statutes of 1987. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by the county.

CHAPTER 621

An act to amend Section 14006 of the Penal Code, relating to the Community Law Enforcement and Recovery Demonstration Project.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 14006 of the Penal Code is amended to read:

14006. The CLEAR project shall remain operative until July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates

on which it becomes inoperative and is repealed. Implementation of this project is contingent upon a Budget Act appropriation.

CHAPTER 622

An act to add Section 22854.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 22854.5 is added to the Vehicle Code, to read:

22854.5. Whenever an officer or employee of a public agency directs the storage of a vehicle under this chapter, the officer, employee, or agency directing that storage may notify the National Law Enforcement Telecommunication System by transmitting by any means available, including, but not limited to, electronic means, the vehicle identification number, the information listed in paragraphs (1), (2), and (3) of subdivision (b) of Section 22852, and the information described under Section 22853.

CHAPTER 623

An act to amend Sections 14837, 14839, 14842, and 14842.5 of, and to repeal Section 14838.6 of, the Government Code, and to amend Sections 999, 999.6, and 999.9 of the Military and Veterans Code, relating to public contracts.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) ''Department'' means the Department of General Services.

(b) ''Director'' means the Director of General Services.

(c) ''Manufacturer'' means a business that is both of the following:

(1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) (1) ''Small business'' means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) ''Microbusiness'' is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars ($2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

(3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude the qualification of businesses that are dominant in their industry. In addition, the standards shall provide that the certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(A) A certified small business or microbusiness is deemed to perform a commercially useful function if the business does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out its obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's,

subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation.

(e) ''Disabled veteran business enterprise'' means an enterprise that has been certified as meeting the qualifications established by subdivision (g) of Section 999 of the Military and Veterans Code.

SEC. 2. Section 14838.6 of the Government Code is repealed.

SEC. 3. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses, microbusinesses, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses, microbusinesses, and disabled veteran business enterprises.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and disabled veteran business enterprise participation.

(g) Develop, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises in contracting with the state.

(h) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 4. Section 14842 of the Government Code is amended to read:

14842. (a) A business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information,

and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled, shall do all of the following:

(1) Pay to the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded.

(2) In addition to the amount described in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(3) Be ineligible to transact any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than three months and not more than 24 months. State agencies may reject the bid of a supplier offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state under this chapter, even though the bidder is a business in good standing.

(b) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.

(c) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(d) The small business certification of a business found to have violated the provisions of subdivision (a) shall be revoked for a period of not less than one year. For an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The revocation shall apply to the principals of the business and any subsequent businesses formed by those principals.

(e) Prior to the imposition of any sanctions under this article, a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 5. Section 14842.5 of the Government Code is amended to read:

14842.5. (a) It shall be unlawful for a person to do any of the following:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a small business or microbusiness enterprise for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a small business or microbusiness enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a small business or microbusiness enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(5) Knowingly and with intent to defraud, fraudulently represent certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars ($5,000).

(c) Any person who violates subdivision (a) shall, if certified as a small business or a microbusiness, have the business' certification revoked for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than three months nor more than 24 months. However, for an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by those principals. Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further

bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

SEC. 6. Section 999 of the Military and Veterans Code is amended to read:

999. As used in this article, the following definitions apply:

(a) ''Administering agency'' means the Treasurer in the case of contracts for professional bond services, and the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

(b) ''Awarding department'' means any state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the State of California.

(c) ''Bonds'' means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(d) ''Contract'' includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. ''Contract'' also includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(e) (1) ''Contractor'' means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. ''Contractor'' includes any provider of professional bond services who enters into a contract with an awarding department.

(2) ''Disabled Veteran Business Enterprise contractor, subcontractor, or supplier'' means any person or entity that has been certified by the administering agency pursuant to this article and that performs a ''commercially useful function,'' as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(A) A person or an entity is deemed to perform a ''commercially useful function'' if a person or entity does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out the obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

(f) ''Disabled veteran'' means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts (''Old Scouts''), and the Special Philippine Scouts (''New Scouts''), who has at least a 10 percent service-connected disability and who is domiciled in the State of California.

(g) (1) ''Disabled veteran business enterprise'' means a business certified by the administering agency as meeting all of the following requirements:

(A) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.

(B) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

(C) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(2) Notwithstanding paragraph (1), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(h) ''Foreign corporation,'' ''foreign firm,'' and ''foreign-based business'' means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

(i) ''Goal'' means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(j) ''Management and control'' means effective and demonstrable management of the business entity.

(k) ''Professional bond services'' include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

SEC. 7. Section 999.6 of the Military and Veterans Code is amended to read:

999.6. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small Business and Disabled Veteran Business Enterprise Services, the Department of Veterans Affairs, the federal Department of Veterans Affairs, and the Small Business Administration.

SEC. 8. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a disabled veteran

business enterprise in order to obtain or retain a bid preference or a state contract.

(b) Any person who violates any of the provisions of subdivision (a) shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

(c) Any person who violates subdivision (a) shall, if certified as a disabled veteran business enterprise, have the business' certification revoked for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than three months nor more than 24 months. However, for an additional or subsequent violation the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by those principals. Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small Business and Disabled Veteran Business Enterprise Services. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person or contractor to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.

CHAPTER 624

An act to add Section 13514.1 to the Penal Code, relating to peace officer training.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 13514.1 is added to the Penal Code, to read:

13514.1. (a) On or before July 1, 2005, the commission shall develop and disseminate guidelines and standardized training recommendations for all law enforcement officers, supervisors, and managers whose agency assigns them to perform, supervise, or manage Special Weapons and Tactics (SWAT) operations. The guidelines and standardized training recommendations shall be available for use by law enforcement agencies that conduct SWAT operations.

(b) The training and guidelines shall be developed in consultation with law enforcement officers, the Attorney General's office, supervisors, and managers, SWAT trainers, legal advisers, and others selected by the commission. Development of the training and guidelines shall include consideration of the recommendations contained in the Attorney General's Commission on Special Weapons and Tactics (S.W.A.T.) Final Report of 2002.

(c) The standardized training recommendations shall at a minimum include initial training requirements for SWAT operations, refresher or advanced training for experienced SWAT members, and supervision and management of SWAT operations.

(d) The guidelines shall at minimum address legal and practical issues of SWAT operations, personnel selection, fitness requirements, planning, hostage negotiation, tactical issues, safety, rescue methods, after-action evaluation of operations, logistical and resource needs, uniform and firearms requirements, risk assessment, policy considerations, and multijurisdictional SWAT operations.

(e) The guidelines shall provide procedures for approving the prior training of officers, supervisors, and managers that meet the standards and guidelines developed by the commission pursuant to this section, in order to avoid duplicative training.

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CHAPTER 625

An act to add Section 25658.2 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 25658.2 is added to the Business and Professions Code, to read:

25658.2. (a) A parent or legal guardian who knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at the home of the parent or legal guardian is guilty of misdemeanor if all of the following occur:

(1) As the result of the consumption of an alcoholic beverage or use of a controlled substance at the home of the parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.

(2) The parent knowingly permits that child or other underage person, after leaving the parent's or legal guardian's home, to drive a vehicle.

(3) That child or underage person is found to have caused a traffic collision while driving the vehicle.

(b) A person who violates subdivision (a) shall be punished by imprisonment in a county jail for a term not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

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 626

An act to amend Section 5201 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 2003. Filed with
Secretary of State September 30, 2003.]

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

SECTION 1. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the manufacturer for the collection and transportation of garbage, rubbish, or refuse that is used regularly for the collection and transportation of that material by any person or governmental entity employed to collect, transport, and dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) No covering may be used on license plates except as follows:

(1) The installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of the cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(2) The installation of a license plate security cover is not a violation of this subdivision if the device does not obstruct or impair the recognition of the license plate information, including, but not limited to, the issuing state, license plate number, and registration tabs, and the cover is limited to the area directly over the top of the registration tabs. No portion of a license plate security cover shall rest over the license plate number.

(f) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code, shall be installed on, or affixed to, a vehicle.

(g) (1) It is the Legislature's intent that an accommodation be made to persons with disabilities and to those persons who regularly transport persons with disabilities, to allow the removal and relocation of wheelchair lifts and wheelchair carriers without the necessity of removing and reattaching the vehicle's rear license plate. Therefore, it is not a violation of this section if the reading or recognition of a rear license plate is obstructed or impaired by a wheelchair lift or wheelchair carrier and all of the following requirements are met:

(A) The owner of the vehicle has been issued a special identification license plate pursuant to Section 5007, or the person using the wheelchair that is being carried on the vehicle has been issued a distinguishing placard under Section 22511.55 .

(B) (i) The operator of the vehicle displays a decal, designed and issued by the department, that contains the license plate number assigned to the vehicle transporting the wheelchair.

(ii) The decal is displayed on the rear window of the vehicle, in a location determined by the department, in consultation with the Department of the California Highway Patrol, so as to be clearly visible to law enforcement.

(2) Notwithstanding any other provision of law, if a decal is displayed pursuant to this subdivision, the requirements of this code that require the illumination of the license plate and the license plate number do not apply.

(3) The department shall adopt regulations governing the procedures for accepting and approving applications for decals, and issuing decals, authorized by this subdivision.

(4) This subdivision does not apply to a front license plate.

SEC. 2. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt

material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the manufacturer for the collection and transportation of garbage, rubbish, or refuse that is used regularly for the collection and transportation of that material by any person or governmental entity employed to collect, transport, and dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) The rear license plate on a two-axle livestock trailer may be mounted 12 inches or more, but not more than 90 inches, from the ground.

(f) No covering may be used on license plates except as follows:

(1) The installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of the cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(2) The installation of a license plate security cover is not a violation of this subdivision if the device does not obstruct or impair the recognition of the license plate information, including, but not limited to, the issuing state, license plate number, and registration tabs, and the cover is limited to the area directly over the top of the registration tabs. No portion of a license plate security cover shall rest over the license plate number.

(g) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code, shall be installed on, or affixed to, a vehicle.

(h) (1) It is the Legislature's intent that an accommodation be made to persons with disabilities and to those persons who regularly transport persons with disabilities, to allow the removal and relocation of wheelchair lifts and wheelchair carriers without the necessity of removing and reattaching the vehicle's rear license plate. Therefore, it is not a violation of this section if the reading or recognition of a rear license plate is obstructed or impaired by a wheelchair lift or wheelchair carrier and all of the following requirements are met:

(A) The owner of the vehicle has been issued a special identification license plate pursuant to Section 5007, or the person using the

wheelchair that is carried on the vehicle has been issued a distinguishing placard under Section 12511.55.

(B) (i) The operator of the vehicle displays a decal, designed and issued by the department, that contains the license plate number assigned to the vehicle transporting the wheelchair.

(ii) The decal is displayed on the rear window of the vehicle, in a location determined by the department, in consultation with the Department of the California Highway Patrol, so as to be clearly visible to law enforcement.

(2) Notwithstanding any other provision of law, if a decal is displayed pursuant to this subdivision, the requirements of this code that require the illumination of the license plate and the license plate number do not apply.

(3) The department shall adopt regulations governing the procedures for accepting and approving applications for decals, and issuing decals, authorized by this subdivision.

(4) This subdivision does not apply to a front license plate.

SEC. 3. Section 2 of this bill incorporates amendments to Section 5201 of the Vehicle Code proposed by both this bill and SB 315. 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 5201 of the Vehicle Code, and (3) this bill is enacted after SB 315, in which case Section 1 of this bill shall not become operative.

CHAPTER 627

An act to add Chapter 4 (commencing with Section 13994) and Chapter 5 (commencing with Section 13999) to Part 4.7 of Division 3 of Title 2 of, and to add Chapter 3 (commencing with Section 15570) to Part 8.5 of Division 3 of Title 2 of, the Government Code, and to amend Section 22003 of the Public Utilities Code, relating to economic development.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Chapter 4 (commencing with Section 13994) is added to Part 4.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 4. TECHNOLOGY PROGRAMS

13994. 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) ''California-based foundation'' means an organization defined in the Internal Revenue Code as a private foundation, which is incorporated in, and primarily conducts its activities within, the state and receives funding in whole or in substantial part from California-based companies.

(c) ''Collaborative research'' means technological or scientific research that accelerates existing research toward the commercialization of products, processes, and services, and is conducted jointly or funded jointly by some or all of the following:

(1) The private sector, including intraindustry groups, California-based private foundations, industry associations, and nonprofit cooperative associations.

(2) The federal government.

(3) The state.

(4) Public or private universities, colleges, and laboratories.

(d) ''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 technology transfer projects within a specific technology or industry priority.

(e) ''Industry association'' is 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.

(f) ''Information technology'' includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(g) ''Nonprofit cooperative association'' means an association, organized and operating pursuant to either Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code or Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code.

(h) ''Technology'' includes, but is not limited to, the application of science and engineering to research and development, especially for

industrial or commercial objectives, in sectors that include telecommunications, information technologies, electronics, biochemistry, medicine, agriculture, transportation, space, and aerospace.

(i) ''Technology transfer'' means the movement of the results of basic or applied technological or scientific research to the design, development, and production of new or improved products, services, or processes.

13994.1. (a) (1) There is within the agency the Regional Technology Alliance Program. The intent of the regional technology alliances is to decentralize the delivery of services and resources, programs and activities for technology development, commercialization, application, and competitiveness at a regional level.

(2) The agency may designate new regional technology alliances upon application to carry out activities described in this section.

(3) The agency may establish criteria for designation that includes, but need not be limited to, criteria previously established by the Defense Conversion Council pursuant to Article 3.7 (commencing with Section 15346) of Chapter 1, as it read on December 31, 1998.

(b) Each alliance shall perform the following activities:

(1) Raise and leverage funds from multiple public and private sources to support technology development, commercialization, and application and industry competitiveness particularly in response to defense industry conversion and diversification.

(2) Assist in the formation of new businesses.

(3) Maintain an electronic network and access to databases that encourages business ventures.

(4) Coordinate with activities and efforts of industry, academia, federal laboratories, and governments.

(5) Recommend administrative actions or programs that could assist California's defense-dependent industries to successfully convert to commercial markets.

(6) Provide information about state and federal defense conversion programs, including, but not limited to, job training, economic development, industrial modernization, dual-use technology, new management techniques, and technology development and transfer.

(7) Identify emerging industries that may include commercial space applications, transportation, environment, high performance computing and communications, biotechnology and advanced materials, and processing and critical existing industries.

(c) Each alliance may also perform, but need not be limited to, the following activities:

(1) Assist in identifying businesses that could benefit from defense conversion programs and defense-dislocated workers who require employment and training opportunities.

(2) Assist and provide coordination in determining job opportunities within and outside of the defense industry for which displaced workers could be retrained and placed.

(3) Serve as a forum for industrywide networking linking producers, suppliers, and consumers.

(4) Assist individual businesses and industry consortia in applying for state and federal defense conversion program funds.

(5) Provide information and assistance in upgrading individual businesses and industrywide production and management processes.

(6) Provide information on available state and federal resources to aid businesses and workers affected by defense spending reductions, base closures, plant closures, and layoffs, to foster long-term economic vitality, industrial growth, and job opportunities.

(d) Each alliance is encouraged to develop activities that achieve the following results:

(1) Creation and retention of jobs.

(2) Creation of new businesses.

(3) Development of new commercial or dual-use products.

(4) Establishment of industry partnerships and consortia.

(5) Demonstration of productivity enhancement such as return on investment, reduced cost, employee training, and upgrades.

(6) Establishment of public and private partnerships.

(7) Commitment of industry support, participation, and capital.

(8) Leverage of state funds.

(9) Loan repayment ratio.

(10) Participation of small businesses and minority-, women-, and disabled veteran-owned businesses.

(11) Workforce training.

(e) The agency shall be authorized to enter into a contract for services with any alliance to provide services to the office. These contracts shall be sole source contracts, and exempt from the competitive bid process.

(f) During the first two years following selection of an alliance, the alliance shall monitor the performance of any application funded pursuant to Section 13994.2, and each invoice for payment shall be reviewed and approved by the alliance, but the contract for services shall be directly between the agency and the entity receiving grant funding. Commencing with the third year of designation, any alliance with procedures and processes approved by the agency shall be authorized to directly contract with grant recipients. The agency shall audit these grants on a regular basis.

13994.2. (a) There is within the agency the Challenge Grant Program, consisting of technology transfer grants and defense industry conversion and diversification grants. Challenge grant projects funded shall include, but not be limited to, the following: defense industry conversion and diversification, access to ongoing research and research findings, exchange or transfer of personnel and research support services, including capital outlay, consortia development, and collaborative research.

(b) All funds appropriated or received by the Challenge Grant Program shall administratively be divided into either the Technology Transfer Grant Program or the Defense Industry Conversion and Diversification Program. Funding awards for the Technology Transfer Grant Program shall be made pursuant to the requirements set forth in Sections 13994.3 and 13994.6.

(c) The agency shall award grants based upon a competitive application process addressing the project's eligibility and ability to fulfill the goals of the program.

(d) The agency shall report on this program to the Governor and the Legislature.

13994.3. (a) An eligible technology transfer or defense industry conversion and diversification project shall, at least, do all of the following:

(1) Identify the sources of funding for the entire project.

(2) Not supplant other funding.

(3) Demonstrate that a significant portion of the project will be undertaken in California.

(b) In addition to the requirements contained in subdivision (a), a defense industry conversion and diversification project shall not receive more than 25 percent of the total project costs requested in the proposal.

(c) In addition to the requirements contained in subdivision (a), a technology transfer project shall:

(1) Represent a technology or industry, or both, targeted in the application.

(2) Include a significant amount of matching contributions from either of the following:

(A) A private sector company or companies.

(B) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

(3) Include either of the following:

(A) A private sector company or companies that have significant operations in the state.

(B) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

13994.4. The technology transfer grantee shall not incur expenses to be paid with grant funds without evidence of a workable agreement between the parties participating in the project that includes at least both of the following:

(a) A resolution of the intellectual property rights relative to the project.

(b) A direct and ongoing involvement of the public and private sectors, when applicable in the project.

13994.5. (a) In awarding technology transfer grants, the agency shall consider the following:

(1) The likelihood of commercialization of a product, service, or process.

(2) The potential impact on the state's economy.

(3) The cost-effectiveness of the project.

(4) The importance of state funding for the viability of the project.

(5) Cost sharing by other participants.

(6) The involvement of small businesses and minority-, disabled veteran-, and women-owned businesses.

(7) Projects that will result in a prototype by the end of the grant period.

(8) Other criteria that the agency determines are consistent with the purposes of the program.

(b) The agency shall target industries and technologies with a potential for enhancing the California economy, and shall fund projects within those industries and utilizing those technologies.

13994.6. Technology transfer projects may include reasonable overhead costs incurred by a research institute and related to the project that shall not exceed the allowable federal overhead costs for research. All other projects may include any costs authorized by the principal funding agency, and not precluded by state requirements.

13994.7. Except for defense industry conversion and diversification projects, only a public agency or a not-for-profit or nonprofit organization shall receive funds under this chapter. Any person or entity is authorized to receive a defense industry conversion and diversification grant.

13994.8. (a) The agency may obtain scientific and technological expertise as needed to provide advice and input on the program, the establishment of targeted technologies and industries, the review of grant applications, and the review of project performance.

(b) The agency may award funds over a multiyear period to a grantee without requiring the grantee to reapply, so long as the funds in multiple years are utilized for the same project originally funded.

13994.9. (a) Notwithstanding Sections 13994.2, 13994.3, 13994.4, and 13994.5, and the regulations implementing this chapter, the secretary may award discretionary technology transfer grants totaling not more than 5 percent or one hundred thousand dollars ($100,000), whichever is greater, of the funds appropriated each year for this program.

(b) Notwithstanding Sections 13994.2, 13994.3, 13994.4, 13994.5, and subdivision (a) of this section, the secretary may award up to 15 percent of the funds appropriated for a given fiscal year for consortia development projects that do not have private sector match but will have private sector match within six months from the date of the award of funding. For purposes of this subdivision, ''private sector match'' means a cash or in-kind contribution available for expenditure or use to a consortium development project. If, after six months, no private sector match is available, funding under the program shall cease and all moneys previously received shall be returned to the state.

13994.10. (a) In order to carry out this chapter, there is hereby created in the State Treasury the California Competitive Technology Fund.

(b) The fund shall receive state funds appropriated to it, contributions from nonstate sources, reimbursements, federal funds, and interest that accrues to the moneys in the fund pursuant to subdivision (c).

(c) The Treasurer shall invest moneys contained in the fund not needed to meet current obligations in the same manner as other public funds are invested.

(d) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated without regard to fiscal years to the agency for the purposes of this chapter, and for the purposes for which moneys were provided. Except for state funds appropriated to, or transferred into, the fund for local assistance, moneys in the fund, including all interest, may be spent for support.

13994.11. The agency shall report on this program to the Governor and the Legislature.

13994.12. There is hereby established within the agency the Technology Planning Program. The program shall provide grants and technical assistance to California nonprofit organizations and public entities working within specific industries to identify conversion or expansion projects. Grants may be awarded in the areas of strategic planning and strategic alliances. 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 goals of the program. Priority shall be given to those projects with the identified support of industry representatives, matching funding, projects likely to receive federal funds requiring matching funds, and any other criteria determined by the agency. A project example is a joint effort to develop and commercialize defense-related technologies by federal laboratories, universities, and companies in close geographical proximity.

SEC. 2. Chapter 5 (commencing with Section 13999) is added to Part 4.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 5. SPACE ENTERPRISE DEVELOPMENT ACT

13999. This chapter shall be known and may be cited as the Space Enterprise Development Act.

13999.1. For purposes of this act, the following terms have the following meanings:

(a) ''Agency'' means the Business, Transportation and Housing Agency.

(b) ''Authority'' means the California Spaceport Authority.

(c) ''Date of designation'' means the date that the spaceport receives designation by the authority pursuant to Section 13999.3.

(d) ''Governing body'' means the governing body of a city, county, city and county, special district, or joint powers authority.

(e) ''Launch'' means to place, or attempt to place, a launch vehicle into a ballistic, suborbital, or orbital trajectory, into Earth orbit in outer space, or otherwise into outer space, and also is a means of placing a commercial, civil, or military payload into Earth orbit or beyond, including all activities involved in the preparation of a launch vehicle for flight, including all processing, servicing, and support activities that take place at a launch site or at a California mission control support site for ocean launches. A ''launch'' begins with the arrival of the launch vehicle or payload at the launch site.

(f) ''Launch site'' means a location from which a space launch or operation directly associated with a space launch takes place, a location at which a launch vehicle or its payload, if any, is intended to land, or as defined in the Commercial Space Launch Act (49 U.S.C. Sec. 70101 and following). The site includes any right-of-way directly associated with the space launch or reentry operations and all facilities and support infrastructure related to launch, reentry, or payload processing.

(g) ''Launch vehicle'' means a vehicle specifically designed and built to operate in or place a payload in the upper atmosphere or outer space. ''Launch vehicles'' include, but are not limited to, expendable space launch vehicles and reusable launch vehicles.

(h) ''Operation of a launch site'' means the conduct of approved safety operations at a launch site to support the launching of vehicles and payloads.

(i) ''Operation of a reentry site'' means the conduct of safety operations at a fixed site on Earth at which a reentry vehicle and its payload, if any, is intended to land.

(j) ''Payload'' means an object, including, but not limited to, a satellite that a licensed launch site undertakes to place into outer space by means of a launch vehicle, including components of the vehicle specifically designed or adopted to support that activity.

(k) ''Person'' means any individual and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any state or nation.

(*l*) ''Reentry'' means the return of any launch vehicle that has been placed in a ballistic, suborbital, or orbital trajectory, and its payload, if any, to the Earth. ''Reentry'' includes all activities involved in the postflight ground operations. A ''reentry'' ends when a launch vehicle or payload, if any, has completed its descent to Earth and is retrieved.

(m) ''Reentry site'' means the location on Earth at which a reentry is intended to occur, as defined in a license issued or transferred by the United States Secretary of Transportation, and any necessary support infrastructure related to reentry or payload recovery.

(n) ''Reusable launch vehicle'' means a vehicle that is designed to launch into an orbital or suborbital trajectory, into Earth orbit in outer space, or otherwise into outer space, that returns to Earth and is reused for a subsequent future launch.

(o) ''Secretary'' means the Secretary of Business, Transportation and Housing.

(p) ''Spaceport'' means an entity that has been designated pursuant to Section 13999.3.

13999.2. (a) Subject to the availability of funds appropriated for that purpose, the Business, Transportation and Housing Agency shall implement a space enterprise development program to foster activities that increase the competitiveness of space enterprise in California, including, but not limited to, the commercial use of space, space vehicle launches, space launch infrastructure, manufacturing, applied research, technology development, economic diversification, and business development.

(b) The agency may contract with other state or private agencies, nonprofit corporations, universities, firms, or individuals for the performance of technical or specialized work, or for services related to space enterprise development programs.

(c) The secretary shall select a California nonprofit corporation to assist the agency in its administration of space enterprise economic

development activities through programs, projects, grants, partnerships, networks, and collaboration. The corporation shall be selected through a solicitation process established by the agency. The solicitation process shall include criteria for selection of the corporation, which shall include, but not be limited to, demonstrated experience in space enterprise and the ability to perform space enterprise development activities described in subdivision (d).

(d) The corporation may perform one or more of the following activities, as determined contractually between the agency and the corporation:

(1) Serve as the California Spaceport Authority with responsibilities specified in Section 13999.3.

(2) Pursue grants from the federal government or from private businesses, foundations, or individuals, for California space enterprise activities, including, but not limited to, studies, services, infrastructure improvements and modernization, and defense transition programs, to the extent permitted by law.

(3) Identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information.

(4) Develop and implement a state strategy for applying and commercializing technology to create jobs, respond to industry changes, and foster innovation and competitiveness in space enterprise.

(5) Provide information to the secretary relevant to changes in federal, state, and local statutes and regulations that will enhance the development of space enterprise in California.

(6) Provide information to the secretary regarding the development of laws, regulations, decisions, or determinations affecting the economic and employment impacts of space enterprise in California.

(7) Provide recommendations to the secretary for appropriate state funding mechanisms and amounts to promote development of space enterprise in California, including education and workforce development.

(8) Provide recommendations to the secretary in the form of strategic planning documents.

(9) Review applications for, and promote, the California Space Enterprise Competitive Grant Program established by Section 13999.4.

(e) (1) The agency and the corporation shall enter into an annual contract specifying the activities to be performed by the corporation.

(2) Pursuant to the contract, the corporation shall submit to the agency quarterly reports of its activities and finances. The quarterly reports shall be of sufficient detail for the agency to determine whether the corporation is in compliance with the annual contract between the agency and the corporation.

(3) The annual contract shall include conflict of interest requirements developed by the agency.

(4) Failure of the corporation to comply with the conditions in the annual contract, as evidenced in the quarterly reports and any supplemental monitoring of the corporation by the agency, shall result in the cancellation of the annual contract and deselection of the corporation. Upon the deselection of the corporation, the agency shall utilize the solicitation process set forth in subdivision (c) to select a replacement corporation.

13999.3. (a) The California Spaceport Authority shall designate spaceports for the operation of launch sites or reentry sites.

(b) Any city, county, city and county, special district, joint powers authority, or private entity, as appropriate, may apply to the authority for designation as a spaceport.

(c) (1) The application described in subdivision (b) shall require at least the following information to be submitted to the authority:

(A) A written notice of intent to apply for a federal launch site operator's license from the United States Secretary of Transportation under the authority of the Commercial Space Launch Act (49 U.S.C. Sec. 70101 and following), to be received by the authority no later than 60 days prior to the submission of the application to the United States Secretary of Transportation.

(B) A copy of the perfected application submitted to the United States Secretary of Transportation for a federal launch site operator's license.

(C) A written notice of acceptance or denial by the United States Secretary of Transportation for a federal launch site operator's license. If acceptance is granted, a copy of the license shall be included in the written notice.

(2) This subdivision shall not apply to any launch site operator who is federally licensed on or before January 1, 2001.

(d) The authority shall withdraw spaceport designation upon receipt of notice from the Federal Aviation Administration that the launch site operator of the spaceport no longer meets safety requirements or that safety deficiencies in the spaceport have remained uncorrected for a reasonable period of time after being identified.

13999.4. (a) The California Space Enterprise Competitive Grant Program is hereby established within the Business, Transportation and Housing Agency to provide funding, upon appropriation by the Legislature, for the development of space enterprise in California. For purposes of this section, space enterprise activities shall include, but are not limited to, the commercial use of space, space vehicle launches, space launch infrastructure, manufacturing, applied research, technology development, economic diversification, and business development. Entities conducting activities in California intended to

improve the competitiveness of space enterprise in California, including public, private, educational, commercial, nonprofit, or for-profit entities may apply for grants.

(b) (1) If program funding is appropriated by the Legislature, the corporation selected pursuant to subdivision (c) of Section 13999.2 of this bill shall, at least annually, issue solicitations. No solicitation shall be issued without the prior review and approval by the agency. If the corporation has not issued a solicitation within 180 days of the appropriation of funds, the agency shall issue the solicitation.

(2) Solicitations developed by the corporation shall include minimum eligibility and requirements. Additional requirements may be added to each year's grant solicitation. The solicitation shall address at least all of the following:

(A) Jobs created and retained by the implementation of the project.

(B) Cost sharing by other project participants, which should include at least one of the following:

(i) A private sector company or companies.

(ii) One or more foundations, industry associations, or nonprofit cooperative associations, or any combination thereof.

(iii) In-kind support, which may include staff and facilities.

(iv) Federal or local government funding.

(C) A condition that grant funds will not be used to supplant other project funds.

(D) A demonstration that a majority of the project will be undertaken in California.

(E) An agreement among all project participants as to intellectual property rights relative to the project.

(F) The potential impact on the state's economy.

(G) The cost-effectiveness of the project.

(H) The importance of state funding for the viability of the project.

(I) A demonstration of technical feasibility and an assessment of programmatic risk.

(c) In evaluating grant proposals, the corporation shall establish an impartial review panel composed of technical and scientific experts and government representatives to review grant applications. The panel shall be composed of members from throughout the state who are knowledgeable about activities related to space enterprise. No more than 30 percent of the panel members shall be government representatives, and all other members shall either be actively involved in, or be technical and scientific experts in activities related to, space enterprise. No more than 30 percent of the panel members shall be members of, or on the board of directors of, the corporation.

(d) (1) The review panel shall review all applications received by the deadline specified in the solicitation in order to determine the

applications that are complete and that meet the criteria set forth in the solicitation. The review panel may rely on experts who are not part of the panel in order to determine compliance with one or more criteria.

(2) All applications meeting the criteria set forth in paragraph (1) shall be submitted to the agency.

(3) The agency may remove one or more applications from those submitted by the review panel upon a determination that the application did not meet the criteria set forth in paragraph (1). The agency shall rank the grant applications received from the review panel, minus any applications removed by the agency because of failure to meet the criteria. The ranking shall be based upon criteria stated in the solicitation. The ranking shall include recommendations as to the amount of state funding for each grant application.

(e) The secretary shall award program grants based upon the criteria set forth in paragraph (1) of subdivision (d).

(f) The funding determination shall be transmitted to the Governor and the chairpersons of the Senate and Assembly fiscal committees and shall be subject to the availability of funds appropriated for that purpose.

(g) The solicitation process set forth in this section shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1.

(h) The Legislature hereby finds and declares that the granting of funds to private entities serves a public purpose by assisting an industry vital to the health and welfare of the State of California.

SEC. 3. Chapter 3 (commencing with Section 15570) is added to Part 8.5 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3. CALIFORNIA ECONOMIC DEVELOPMENT STRATEGIC PLAN

15570. (a) The secretary shall lead the preparation of a biennial California Economic Development Strategic Plan. In fulfilling this duty, the secretary shall do the following:

(1) Review the recommendations made by the California Economic Strategy Panel in their biennial economic development strategic plan document. This document shall make recommendations regarding an economic development strategic plan for the state, covering a two-year time period and containing a statement of economic goals for the state, a prioritized list identifying significant issues learned from economic development strategic plan panel meetings, proposals for legislation, regulations, and administrative reforms necessary to improve the business climate and economy of the state, evaluation of the effectiveness of the state's economic development programs, a list of key industries in which the state shall focus its economic development efforts, and strategies to foster job growth and economic development

covering all state agencies, offices, boards, and commissions that have economic development responsibilities.

(2) Convene a biennial economic strategy panel to provide recommendations regarding a California economic development strategic plan. This panel shall conduct meetings in Sacramento, all cities of the state with populations over 500,000, and in major cities of other regions of California as designated by the secretary. The secretary shall invite businesses, labor unions, organizations representing the interests of diverse ethnic and gender groups, local government leaders, academic economists and business professors, chambers of commerce and other business organizations, government agencies, and key industries to contribute to the preparation of the recommended economic strategy. These meetings shall address at least the following matters of concern:

(A) Strengths and weaknesses of the California economy and the state's prospects for future economic prosperity.

(B) Emerging and declining industries in California and elsewhere.

(C) Effectiveness of California's economic development programs in creating and retaining jobs and attracting industries.

(D) Adequacy of state and local physical and economic infrastructure.

(E) Government impediments to economic development.

(F) The development of a system of accountability for use in the annual state budget process and in the legislative process to measure the performance of all state policies, programs, and tax expenditures intended to stimulate the economy. In developing a system of accountability, the panel shall, by using only existing resources and without future budget augmentation made for this purpose, do all of the following:

(i) Develop a standard definition of economic development.

(ii) Develop, for use in state law, standard measurements of real per capita income, job growth, new business creation, private sector investment, minority entrepreneurship, and income inequality.

(iii) Survey and evaluate efforts in other states to develop accountability measures for public investments in economic development.

(iv) Determine whether a return on investment calculation is feasible for public investments in economic development.

(v) Conduct a comparative study of various methodologies for preparing the economic development sections of a state budget, including unified functional budget, zero-based budget, and performance-based budget methodologies.

(vi) Study the feasibility of statutory disclosure requirements on specified publicly funded subsidies to private sector businesses.

(vii) Submit a report of its findings and recommendations regarding this subparagraph to the Legislature no later than one year after its first meeting after January 1, 2005.

(b) The panel shall be composed of the following 15 members:

(1) The Secretary of Labor and Workforce Development, who shall serve as chair of the panel.

(2) Eight persons appointed by the Governor.

(3) The Speaker of the Assembly or his or her designee.

(4) The President pro Tempore of the Senate or his or her designee.

(5) The Minority Leader of the Assembly or his or her designee.

(6) The Minority Leader of the Senate or his or her designee.

(7) One person appointed by the Speaker of the Assembly.

(8) One person appointed by the Senate Committee on Rules.

(c) The panel shall be representative of state government, business, labor, finance, and academic institutions, and shall be broadly reflective of the state's population as to gender, ethnicity, and geographic residence within California.

At least one-half of all the persons on the panel shall be from the private sector and at least two appointments shall be from private businesses with less than 50 employees. At least two appointments shall be from rural areas of the state. Beginning January 1, 2004, appointments to the panel shall be for four-year terms, except that the Governor's appointments made pursuant to paragraph (2) of subdivision (b) shall be made as follows:

(1) Four members shall be appointed on January 1, 2004, and every four years thereafter.

(2) Four members shall be appointed on January 1, 2004, for a two-year term.

(3) Upon the expiration of the initial appointments made pursuant to paragraph (2), four members shall be appointed on January 1, 2006, and every four years thereafter.

(d) The secretary shall deliver copies of the economic strategy panel's recommended California economic development strategic plan to every constitutional officer, legislator, member of the Governor's cabinet, members of the economic development strategic plan panel, and every state agency, office, board, and commission having economic development responsibilities.

(e) In each succeeding two-year cycle, the secretary shall undertake this process anew, so as to update the economic strategy on or before October 31 of each succeeding second year.

SEC. 4. Section 22003 of the Public Utilities Code is amended to read:

22003. (a) Unless the context otherwise requires, the definitions and general provisions contained in this chapter govern the construction of this part.

(b) ''Spaceport'' and associated terms contained in this part shall be defined pursuant to Section 13999.1 of the Government Code.

CHAPTER 628

An act to add Article 3 (commencing with Section 9700) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Article 3 (commencing with Section 9700) is added to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, to read:

Article 3. San Diego Multiuse Biotechnology Training Center

9700. For purposes of this article, ''center'' means the San Diego Multiuse Biotechnology Training Center.

9701. (a) The Legislature finds and declares the following:

(1) Biotechnology represents one of the most promising, innovation-based growth industries of this era. California is the nation's leading state in biotechnology innovation and production.

(2) The San Diego region, as the world's third largest biotechnology industry cluster, is host to world-class generators of science and technology in biotechnology and the related life sciences.

(3) Despite the specialized nature of emerging biotechnology firms, their recent growth has been extensive, and with that growth has come an ever-increasing demand for trained biotechnology workers at all levels. The industry's workforce has grown at an annual rate of about 15 percent over the past five years, and California's biotechnology workforce could easily grow to over 250,000 by the year 2015 from its current level of 100,000.

(4) Biotechnology employers need entry-level and advanced professionals that have a background in, and familiarity with, industrylike conditions for basic, applied, and translational research, development, and production. Based on recent studies, there is a clear

and strong demand for applied bioscience training, but that demand is currently not being met by the region's universities and colleges.

(5) Companies nationally have overwhelmingly endorsed an ''industry-focused'' approach of providing internship training programs directly with the companies, combined with ''company-like'' training activities.

(6) Many firms have identified the difficulty in finding entry level biotechnology workers at both the graduate and undergraduate levels as being directly related to the students' lack of applied industry training or exposure. Many firms have had to extensively train new employees to teach them how to function in a biotechnology business environment. Additionally, nearly three-fourths of firms surveyed in San Diego and nationally have indicated that they would benefit from being able to hire workers that have been prepared to enter the workforce through advanced biotechnology internships and training of a ''specific'' nature.

(7) San Diego and the surrounding area is served by many well-recognized academic institutions, from community colleges to universities offering doctorate programs, that supply educated workers to the biotechnology industry. At each academic level (AA, BS/BA, MS/MA, Ph.D.) curricula are in place, but most of the curricula are only marginally related to biotechnology workforce preparation in the applied sector. Applied education in the form of internships or instruction in practical science skills that would smooth the transition from academic institutions to the commercial biotechnology environment is even less prevalent than the biotechnology curricula offered at many schools, and is only now just emerging.

(8) Many of California's firms have found that many students graduate from four-year university programs with adequate conceptual understanding of biotechnology, but with relatively little practical laboratory experience, especially in the skills and protocols that are specific to commercial ventures as opposed to academic research.

(9) In 2001, the Legislature created the Pasadena Bioscience Center to address biotechnology workforce needs in the Los Angeles region. The Pasadena Bioscience Center provides applied workforce training and includes components for research and innovation, new business incubation, and bioinformatics. In cooperation with California State University, the City of Pasadena, Pasadena City College, the California Institute of Technology, Huntington Medical Research Institutes, and local biotechnology companies and organizations, the Pasadena Bioscience Center serves as a successful model of focused education and training, tailored to specific industry needs, and that may be utilized in other areas of the state.

(b) The Legislature further finds and declares that to address workforce needs in biotechnology, a multiuse biotechnology training

center is being created in San Diego to serve as an anchor and catalyst for the growth of biotechnology enterprises in San Diego. The center will operate as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and will serve as a catalyst for accelerating the growth and formation of new bioscience enterprises that will create value-added jobs and high economic multipliers in the San Diego region. For this purpose:

(1) The center will provide state-of-the-art, industry-oriented bioscience training and act as a strong contributor to the growth and retention of bioscience companies in the region. As such, the center, as proposed, will help encourage biotechnology companies to remain in the region, thereby offsetting the pull of other, less expensive business environments that have been recruiting both startup and existing local area bioscience companies.

(2) The center will utilize the organization, programs, and work of the Pasadena Bioscience Center as successful models in the development of the San Diego Multiuse Biotechnology Training Center and its programs.

(3) The new center will serve as a world class biotechnology workforce training facility offering practical, hands-on learning experiences, including short-term workshops and courses, and more extended training that will involve putting together multidisciplinary, multilevel teams of researchers, technicians, production specialists, apprentices, and students to work in a businesslike environment.

(4) The center will coordinate an extensive applied biotechnology internship program that will place students in local biotechnology companies for practical training and experience.

(5) The center will have the most relevant and advanced training possible, including an emphasis in bioinformatics, that will ensure that the center attains a position at the forefront of this rapidly expanding, cross-application specialization within biotechnology.

(6) The center will have facilities and a collection of instruments not generally available to the region's secondary schools, colleges, or universities.

(7) The center can serve as a capstone training site for regional institutions.

(8) The center will address the needs of existing as well as future industry employees.

(9) The center may appoint directors to a board of directors, and existing participants in the center may serve as the original board of directors. The center may appoint new directors, as necessary, in its discretion.

(10) The center will work with private universities, companies, associations, and various public agencies through memoranda of

understanding under Section 9702, for the purpose of coordinating services and receiving assistance and support.

9702. The San Diego Community College District, California State University, University of California, Employment Development Department, Employment Training Panel, California Health and Human Services Agency, Labor and Workforce Development Agency, California Workforce Investment Board, and the San Diego Workforce Partnership may enter into memoranda of understanding with the center to utilize existing staff and resources to provide any of the following:

(a) Funding, if moneys are appropriated.
(b) Staff.
(c) Program development.
(d) Outreach.
(e) Coordination.
(f) Implementation.
(g) Strategy.
(h) Physical office, administration, and training space.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because the unique geographic, demographic, and commercial dynamics in the San Diego region are especially conducive to innovation and production in the biotechnology industry and provide a unique opportunity to implement and refine possible solutions to improving the education and training of the biotechnology workforce, in a manner that would encourage biotechnology companies to remain in, and migrate to, the region to the benefit of the economies of the San Diego region and the entire State of California.

CHAPTER 629

An act to amend Sections 2850, 2851, 2852, 2853, 2854, 2855, and 17200 of, and to repeal Section 2856 of, the Probate Code, relating to conservators, guardians, and trustees.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 2850 of the Probate Code is amended to read:

2850. (a) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the

court for any purpose, but shall otherwise be kept confidential. On request, the registry may disclose to the public whether an individual is or is not registered with the Statewide Registry. Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator, guardian, or trustee or who are currently serving as a conservator, guardian, or trustee shall register with the Statewide Registry and shall reregister every three years thereafter. ''Registration'' means the filing of a declaration pursuant to subdivision (b).

(b) All conservators, guardians, and trustees required to file information with the clerk of the court pursuant to Section 2340 or required to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars ($2,000), or both that fine and imprisonment. The declaration shall contain the following information:

(1) Full name.

(2) Professional name, if different from (1).

(3) Business address.

(4) Business telephone number or numbers.

(5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.

(6) The names of the conservator's current conservatees, the guardian's current wards, or the current trusts administered by the trustee.

(7) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.

(8) Whether he or she has ever been removed for cause or resigned as conservator, guardian, or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

(c) On request, the registry may disclose to a member of the public the educational background and professional experience of a conservator, guardian, or trustee registered with the Statewide Registry.

(d) The Department of Justice may charge a reasonable fee to persons registering and re-registering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

(e) Each court clerk shall forward a copy of any complaint filed with that court, and found to be meritorious by that court, against a conservator, guardian, or trustee in his or her capacity as a conservator, guardian, or trustee for inclusion in the Statewide Registry. The Statewide Registry shall place any copies of those complaints in the file

of that conservator, guardian, or trustee. No anonymous complaint may be considered pursuant to this section.

SEC. 2. Section 2851 of the Probate Code is amended to read:

2851. (a) A court may not appoint a person as a conservator, guardian, or trustee unless that person, if required to register under Section 2850, is registered with the Statewide Registry.

(b) Any person serving as a conservator or guardian prior to January 1, 2000, who does not register with the Statewide Registry by either January 1, 2001, or by the date of the next required review pursuant to Section 1850, whichever is sooner, shall be removed as a conservator or guardian by the court. A trustee required to register under Section 2850 who has not registered with the Statewide Registry on or before January 1, 2005, shall be removed as a trustee by the court.

(c) In appointing, continuing the appointment, or removing a person as conservator, guardian, or trustee, the court shall examine and consider the information contained in the Statewide Registry for that person. The information contained in the Statewide Registry shall be made available to the court for this purpose, but shall otherwise be kept confidential, except as provided by law.

SEC. 3. Section 2852 of the Probate Code is amended to read:

2852. (a) Any person required to register under Section 2850 who serves as a conservator, guardian, or trustee without being registered with the Statewide Registry, who commits fraud in registering, who falsely asserts that he or she is registered, or who makes false claims or representations as to the nature of his or her file contained in the registry, shall be subject to a civil penalty in the amount of two hundred dollars ($200) for the first violation and a civil penalty in the amount of five hundred dollars ($500) for each subsequent violation, to be assessed and collected in a civil action brought by the Department of Justice. All civil penalties collected shall be deposited in the General Fund. A person who lawfully delays registration pursuant to subdivision (b) of Section 2851 shall not be subject to a civil penalty for serving as a conservator, guardian, or trustee without being registered until the time that subdivision (b) of Section 2851 authorizes his or her removal for failure to register.

(b) Any court that removes a conservator, guardian, or trustee for cause, and any court that has accepted the resignation of a conservator, guardian, or trustee, shall notify the Statewide Registry of that removal or resignation and the reason therefor. The courts shall consider that information prior to the appointment of a person or entity pursuant to a subsequent petition for appointment as conservator, guardian, or trustee.

SEC. 4. Section 2853 of the Probate Code is amended to read:

2853. Notwithstanding any other provision of this chapter, in cases of urgency, where circumstances and justice warrant the appointment of

a conservator, guardian, or trustee and time is limited, a court may appoint a person as conservator, guardian, or trustee without consulting the Statewide Registry or requiring registration prior to appointment.

SEC. 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, 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 a trustee who administers less than six trusts at the same time. 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. 6. Section 2855 of the Probate Code is amended to read:

2855. It is the intent of the Legislature that both:

(a) Counties that provide for registration of conservators, guardians, or trustees continue to do so, and that the Statewide Registry not replace county registration.

(b) Courts maintain oversight over the complaint process in order to safeguard the reputations of conservators, guardians, and trustees against unfounded complaints.

(c) A conservator, guardian, or trustee who is reregistering with the Statewide Registry, after having met all the requirements stated in Section 2850, not be required to reverify previously claimed college or graduate degrees.

SEC. 7. Section 2856 of the Probate Code is repealed.

SEC. 8. Section 17200 of the Probate Code is amended to read:

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee should not be removed for failing to register in the Statewide Registry under Section 2850.

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 630

An act to add Section 230.2 to the Labor Code, relating to employment.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 230.2 is added to the Labor Code, to read:

230.2. (a) As used in this section:

(1) ''Immediate family member'' means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) ''Registered domestic partner'' means a domestic partner, as defined in Section 297 of the Family Code, and registered pursuant to Part 2 (commencing with Section 298) of Division 2.5 of the Family Code.

(3) ''Victim'' means a person against whom one of the following crimes has been committed:

(A) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(B) A serious felony, as defined in subdivision (c) of Section 1192.7 of the Penal Code.

(C) A felony provision of law proscribing theft or embezzlement.

(b) An employer, and any agent of an employer, shall allow an employee who is a victim of a crime, an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a victim to be absent from work in order to attend judicial proceedings related to that crime.

(c) Before an employee may be absent from work pursuant to subdivision (b), the employee shall give the employer a copy of the notice of each scheduled proceeding that is provided to the victim by the agency responsible for providing notice, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employer shall not take any action against the employee if

the employee, within a reasonable time after the absence, provides the employer with documentation evidencing the judicial proceeding from any of the following entities:

(1) The court or government agency setting the hearing.

(2) The district attorney or prosecuting attorney's office.

(3) The victim/witness office that is advocating on behalf of the victim.

(d) An employee who is absent from work pursuant to subdivision (b) may elect to use the employee's accrued paid vacation time, personal leave time, sick leave time, compensatory time off that is otherwise available to the employee, or unpaid leave time, unless otherwise provided by a collective bargaining agreement, for an absence pursuant to subdivision (b). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(e) An employer shall keep confidential any records regarding the employee's absence from work pursuant to subdivision (b).

(f) An employer may not discharge from employment or in any manner discriminate against an employee, in compensation or other terms, conditions, or privileges of employment, including, but not limited to the loss of seniority or precedence, because the employee is absent from work pursuant to this section.

(g) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (b) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (b) shall have one year from the date of occurrence of the violation to file his or her complaint.

(h) District attorney and victim/witness offices are encouraged to make information regarding this section available for distribution at their offices.

CHAPTER 631

An act to add Section 53115.1 to, to repeal Section 53100.5 of, and to repeal and add Section 53115.2 of, the Government Code, relating to emergency services.

[Approved by Governor September 30, 2003. Filed with
Secretary of State September 30, 2003.]

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

SECTION 1. Section 53100.5 of the Government Code is repealed.

SEC. 2. Section 53115.1 is added to the Government Code, to read:

53115.1. (a) There is in state government the State 911 Advisory Board.

(b) The advisory board shall be comprised of the following members appointed by the Governor who shall serve at the pleasure of the Governor.

(1) The Chief of the California 911 Emergency Communications Office shall serve as the nonvoting chair of the board.

(2) One representative from the Department of the California Highway Patrol.

(3) Two representatives on the recommendation of the California Police Chiefs Association.

(4) Two representatives on the recommendation of the California State Sheriffs' Association.

(5) Two representatives on the recommendation of the California Fire Chiefs Association.

(6) Two representatives on the recommendation of the CalNENA Executive Board.

(7) One representative on the joint recommendation of the executive boards of the state chapters of the Association of Public-Safety Communications Officials-International, Inc.

(c) Recommending authorities shall give great weight and consideration to the knowledge, training, and expertise of the appointee with respect to their experience within the California 911 system. Board members should have at least two years of experience as a Public Safety Answering Point (PSAP) manager or county coordinator, except where a specific person is designated as a member.

(d) Members of the advisory board shall serve at the pleasure of the Governor, but may not serve more than two consecutive two-year terms, except as follows:

(1) The presiding Chief of the California 911 Emergency Communications Office shall serve for the duration of his or her tenure.

(2) Four of the members shall serve an initial term of three years.

(e) Advisory board members shall not receive compensation for their service on the board, but may be reimbursed for travel and per diem for time spent in attending meetings of the board.

(f) The advisory board shall meet quarterly in public sessions in accordance with the Bagley-Keene Open Meeting Act (Article 9

(commencing with Section 11120) of Chapter 2 of Part 1 of Division 3 of Title 2). The Telecommunications Division shall provide administrative support to the State 911 Advisory Board. The State 911 Advisory Board, at its first meeting, shall adopt bylaws and operating procedures consistent with this article and establish committees as necessary.

SEC. 3. Section 53115.2 of the Government Code is repealed.

SEC. 4. Section 53115.2 is added to the Government Code, to read:

53115.2. (a) The State 911 Advisory Board shall advise the Telecommunications Division of the Department of General Services on all of the following subjects:

(1) Policies, practices, and procedures for the California 911 Emergency Communications Office.

(2) Technical and operational standards for the California 911 system consistent with the National Emergency Number Association (NENA) standards.

(3) Training standards for county coordinators and Public Safety Answering Point (PSAP) managers.

(4) Budget, funding, and reimbursement decisions related to the State Emergency Number Account.

(5) Proposed projects and studies conducted or funded by the State Emergency Number Account.

(6) Expediting the rollout of Enhanced 911 Phase II technology.

(b) Upon request of a local public agency, the board shall conduct a hearing on any conflict between a local public agency and the Telecommunications Division regarding a final plan that has not been approved by the Telecommunications Division pursuant to Section 53114. The board shall meet within 30 days following the request, and shall make a recommendation to resolve the conflict to the Telecommunications Division within 90 days following the initial hearing by the board pursuant to the request.

CHAPTER 632

An act to amend Sections 999.2, 999.5, 999.7, and 999.9 of the Military and Veterans Code, and to add Section 10115.9 to the Public Contract Code, relating to veterans.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 999.2 of the Military and Veterans Code is amended to read:

999.2. (a) Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity, including school districts when they are expending state funds for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department.

(b) For purposes of this section:

(1) ''Broker'' or ''agent'' means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) ''Equipment'' means any piece of equipment that is used or provided for rental to any state agency, department, officer, or other state governmental entity, including equipment for which operators are provided.

(3) ''Equipment broker'' means any broker or agent who rents equipment to an awarding department.

(c) A disabled veteran business enterprise that rents equipment to an awarding department shall be deemed to be an equipment broker unless one or more disabled veterans has 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the awarding department a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner. Each disabled veteran owner shall submit his or her federal income tax returns to the administering agency pursuant to subdivision (g) as if he or she were a disabled veteran business enterprise. The disabled veteran business enterprise of a disabled veteran owner who fails to submit his or her tax returns will be deemed to be an equipment broker.

(d) A disabled veteran business enterprise that rents equipment to an awarding department shall, prior to performing the contract, submit to the awarding department a declaration signed by each disabled veteran

owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a disabled veteran business enterprise meeting and maintaining all of the requirements of a disabled veteran business enterprise. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.

(e) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent goal.

(f) A disabled veteran business enterprise that is a broker or agent and that obtains a contract pursuant to subdivision (a) shall, prior to performing the contract, disclose to the awarding department that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.

(g) (1) A disabled veteran business enterprise, and each owner thereof, shall, at the time of certification, submit to the administering agency complete copies of the enterprise's federal income tax returns for the three previous tax years.

(2) A disabled veteran business enterprise, and each owner thereof, shall submit to the administering agency complete copies of the enterprise's federal income tax returns that have a postcertification due date, on or before the due date, including extensions.

(3) A disabled veteran business enterprise that, and each owner thereof who, has not submitted to the administering agency complete copies of the enterprise's federal income tax returns for the three tax years preceding certification nor for each postcertification tax year for which a return was required to be filed, shall have 90 days to submit those returns.

(4) A disabled veteran business enterprise that fails to comply with any provision of this subdivision shall be prohibited from participating in any state contract until the disabled veteran business enterprise complies with the provisions of this subdivision. Funds expended involving a disabled veteran business enterprise during any period in which that enterprise is not in compliance with the provisions of this subdivision shall not be credited toward the awarding department's 3-percent goal.

(h) A disabled veteran business enterprise that fails to maintain the certification requirements set forth in this article shall immediately notify the awarding department and the administering agency of that failure by filing a notice of failure that states with particularity each

requirement the disabled veteran business enterprise has failed to maintain.

SEC. 2. Section 999.5 of the Military and Veterans Code is amended to read:

999.5. (a) The administering agency shall establish a method of monitoring adherence to the goal specified in Section 999.1, including requiring a followup report from all contractors upon the completion of any sale of bonds.

(b) The awarding department shall establish a method of monitoring adherence to the goals specified in Section 999.2.

(c) An awarding department shall not credit toward the department's 3 percent goal state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements.

(d) The administering agency shall adopt rules and regulations, including standards for good faith efforts, for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

SEC. 3. Section 999.7 of the Military and Veterans Code is amended to read:

999.7. (a) (1) On January 1 of each year, each awarding department shall report to the Governor, the Legislature, the Department of General Services, and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.

(2) If the awarding department has not met the established goals for that year, the awarding department shall report to the Legislature, the Department of General Services, and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and shall identify steps it shall take in an effort to achieve the goals.

(b) On April 1 of each year, the Department of General Services shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

SEC. 4. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or

denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(6) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(7) Willfully and knowingly aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(8) Willfully and knowingly fail to file any declaration or notice with the awarding agency that is required by Section 999.2.

(9) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (8), inclusive.

(b) Any person who violates any of the provisions of subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both. In addition, the person shall be liable for a civil penalty of not less than ten thousand dollars ($10,000) nor more than thirty thousand dollars ($30,000) for the first violation, and a civil penalty of not less than thirty thousand dollars ($30,000) nor more than fifty thousand dollars ($50,000) for each additional or subsequent violation. A defendant who violates any of the provisions of subdivision (a) shall pay all costs and attorney's fees incurred by the plaintiff in a civil action brought pursuant to this section.

(c) (1) The Department of General Services shall suspend any person who violates subdivision (a) from bidding on, or participating as either

a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than three years, and if certified as a disabled veteran business enterprise, the department shall revoke the business' certification for a period of not less than three years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than five years. The suspension and revocation shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, those principals.

(2) The Department of General Services shall prohibit any business or person who fails to satisfy the penalties, costs, and attorney's fees imposed pursuant to subdivision (b) from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Department of General Services. The Department of General Services shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The Department of General Services shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(g) The awarding department shall check the central listing provided by the Department of General Services to verify that the person or contractor to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.

SEC. 5. Section 10115.9 is added to the Public Contract Code, to read:

10115.9. A limited liability company may be certified as a disabled veteran business enterprise pursuant to this article if the limited liability company is wholly owned by one or more disabled veterans.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 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 633

An act to amend Sections 2205 and 5008.6 of the Corporations Code, to amend Section 7073.8 of the Government Code, and to amend Sections 17941, 23041, 23701h, 23701x, and and 25111 of, and to add Sections 18405.1, 25113, and 25116 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 2205 of the Corporations Code is amended to read:

2205. (a) A corporation that (1) fails to file a statement pursuant to Section 1502 for an applicable filing period, (2) has not filed a statement pursuant to Section 1502 during the preceding 24 months, and (3) was certified for penalty pursuant to Section 2204 for the same filing period,is subject to suspension pursuant to this section rather than to penalty pursuant to Section 2204.

(b) When subdivision (a) is applicable, the Secretary of State shall mail a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended after 60 days if it fails to file a statement pursuant to Section 1502.

(c) After the expiration of the 60-day period without any statement filed pursuant to Section 1502, the Secretary of State shall notify the Franchise Tax Board of the suspension and mail a notice of the suspension to the corporation, and thereupon, the corporate powers, rights, and privileges of the corporation are suspended, except for the purpose of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name.

(d) A statement pursuant to Section 1502 may be filed notwithstanding suspension of the corporate powers, rights, and privileges pursuant to this section or Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section 1502 by a corporation that has suffered suspension pursuant to this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved

from suspension unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

SEC. 2. Section 5008.6 of the Corporations Code is amended to read:

5008.6. (a) A corporation that (1) fails to file a statement pursuant to Section 6210, 8210, or 9660 for an applicable filing period, (2) has not filed a statement pursuant to Section 6210, 8210, or 9660 during the preceding 24 months, and (3) was certified for penalty pursuant to Section 6810, 8810, or 9690 for the same filing period, shall be subject to suspension pursuant to this section rather than to penalty under Section 6810 or 8810.

(b) When subdivision (a) is applicable, the Secretary of State shall mail a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended 60 days from the date of the notice if the corporation does not file the statement required by Section 6210, 8210, or 9660.

(c) If the 60-day period expires without the delinquent corporation filing the required statement, the Secretary of State shall notify the Franchise Tax Board of the suspension, and mail a notice of the suspension to the corporation. Thereupon, except for the purpose of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights, and privileges of the corporation are suspended.

(d) A statement required by Section 6210, 8210, or 9660 may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under Section 6210, 8210, or 9660, by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board because of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

SEC. 3. Section 7073.8 of the Government Code is amended to read:

7073.8. (a) The agency shall designate up to two Manufacturing Enhancement Areas, as defined by Section 17053.47 of the Revenue and Taxation Code, requested by the governing boards of cities each of which shall meet at least the following criteria:

(1) The unemployment rate in the county in which the applicant is located has been at least three times the state average from 1990 to 1995, inclusive.

(2) The applicant city is, or portions of the city are, designated a federal enterprise community or empowerment zone pursuant to

Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code.

(3) The applicant city is located in a Border Environment Cooperation Commission region as specified in Section 3473 of Title 19 of the United States Code.

(4) At least one of the following:

(A) The designated area has grown by less than 5 percent in population per year for each of the two years preceding the application date.

(B) The median household income for the designated area is under twenty-five thousand dollars ($25,000) per year.

(C) The designated area has a population of under 20,000 persons according to the 1990 federal census.

(D) The designated area is located in a rural community.

(5) An audit of the program shall be made at the end of the 5th and 10th year of its operation by the Trade and Commerce Agency with the cooperation of the local governing board. The audit shall be used to determine how effective the designation has been in attracting manufacturing facilities and creating new employment opportunities. Continuation of the designation is contingent on evidence of success of the program.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any Manufacturing Enhancement Area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to this chapter.

(c) The designation as a Manufacturing Enhancement Area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

SEC. 4. Section 17941 of the Revenue and Taxation Code is amended to read:

17941. (a) For each taxable year beginning on or after January 1, 1997, every limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) (1) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization

is filed on behalf of the limited liability company with the office of the Secretary of State.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated as its final return, the Franchise Tax Board shall notify the taxpayer that the annual tax shall continue to be due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 17356 or 17455 of the Corporations Code.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(d) For purposes of this section, ''limited liability company'' means any organization, other than a limited liability company that is exempt from the tax and fees imposed under this chapter pursuant to Section 23701h or Section 23701x, that is formed by one or more persons under the law of this state, any other country, or any other state, as a ''limited liability company'' and that is not taxable as a corporation for California tax purposes.

SEC. 5. Section 18405.1 is added to the Revenue and Taxation Code, to read:

18405.1. (a) Notwithstanding Section 18405, the Franchise Tax Board may, in its discretion, permit elections made under Section 25111 to be perfected during the period of limitations prescribed under Sections 19057 and 19306 for the applicable taxable year. The statute of limitations of all taxpayers in a water's-edge group whose taxable year falls, in whole or in part, within the period of the election shall remain open to receive adjustments, under claim or deficiency, consistent with that perfection of the election.

(b) Subdivision (a) does not apply to the 1988 taxable year of any taxpayer whose water's-edge election has been perfected pursuant to Section 18405.

SEC. 6. Section 23041 of the Revenue and Taxation Code is amended to read:

23041. ''Taxable year'' means:

(a) For the purposes of the tax imposed under Chapter 2 (commencing with Section 23101), the calendar year, or the fiscal year for which the tax is payable.

(b) For the purposes of the tax imposed under Chapter 1.5 (commencing with Section 23081), Chapter 3 (commencing with Section 23501), or Chapter 4 (commencing with Section 23701), the calendar year or the fiscal year upon the basis of which the net income is computed.

(c) For purposes of the tax imposed under Chapter 2.5 (commencing with Section 23400), (1) in the case of a taxpayer subject to the tax imposed under Chapter 2 (commencing with Section 23101), the calendar year or the fiscal year for which the tax is payable and (2) in

the case of a taxpayer subject to the tax imposed under Chapter 3 (commencing with Section 23501) or Chapter 4 (commencing with Section 23701), the calendar or fiscal year upon the basis of which the net income is computed.

(d) For the purpose of the taxes imposed under this part, a period of 12 months or less.

(e) When referring to a calendar or fiscal year beginning before January 1, 2000, upon the basis of which the net income is computed, the term ''taxable year'' shall mean ''income year,'' as defined in subdivision (a) of Section 23042.

SEC. 7. Section 23701h of the Revenue and Taxation Code is amended to read:

23701h. (a) A corporation described in Section 501(c)(2) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(2) of the Internal Revenue Code under this section, the term ''corporation'' includes a limited liability company that is classified as a partnership or as a disregarded entity.

(2) A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with Section 17941) of Part 10.

SEC. 8. Section 23701x of the Revenue and Taxation Code is amended to read:

23701x. (a) A corporation or trust described in Section 501(c)(25) of the Internal Revenue Code, relating to certain title-holding companies.

(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b) of Section 23038, for purposes of applying Section 501(c)(25) of the Internal Revenue Code under this section, the term ''corporation'' includes a limited liability company that is classified as a partnership or as a disregarded entity.

(2) A limited liability company that, under the authority of this section, is exempt from the tax imposed by this part is also exempt from the tax and fees imposed under Chapter 10.6 (commencing with Section 17941) of Part 10.

SEC. 9. Section 25111 of the Revenue and Taxation Code is amended to read:

25111. (a) For taxable years beginning before January 1, 2003, the making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water's-edge group and which is subject to tax under this part

makes the election. A single taxpayer that is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivision (b). Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated corporation that is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer that is subsequently proved to be a member of the water's-edge group pursuant to a Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for a taxable year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) With the permission of the Franchise Tax Board.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions that are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

(f) To the extent that a taxpayer would have been required to file on a water's-edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to a water's-edge election made in a prior year under this section, the terms of this section no longer apply and that election shall be deemed to have been made under the terms of Section 25113. However, the commencement date of the election made in a prior year under this section shall continue to be treated as the commencement date of the water's-edge election period for purposes of applying the provisions of Section 25113.

SEC. 10. Section 25113 is added to the Revenue and Taxation Code, to read:

25113. (a) Except as provided in subdivision (f), for taxable years beginning on or after January 1, 2003, the election provided for in Section 25110 shall be made on an original, timely filed return for the year of the election. The election will be considered valid if both of the following conditions are satisfied:

(1) The tax is computed in a manner consistent with a water's-edge election.

(2) A written notification of election is filed with the return on a form prescribed by the Franchise Tax Board. Pursuant to regulations promulgated under this section, the Franchise Tax Board may accept the filing of other objective evidence that supports the conclusion that a water's-edge election was intended in lieu of notification on the designated form.

(b) Except as otherwise provided, a water's-edge election shall be effective only if made by every member of the self-assessed combined reporting group that is subject to taxation under this part.

(1) An election made on a group return of a self-assessed combined reporting group shall constitute an election by each taxpayer member included in that group return, unless one of those taxpayers files a separate return in which no election is made and paragraph (2) does not apply.

(2) A taxpayer that fails to make an election on its own timely filed original return shall be deemed to have elected if either of the following apply:

(A) It has a parent corporation that is an electing taxpayer that included the income and apportionment factors of the nonelecting taxpayer in the self-assessed combined reporting group reflected in the electing parent's timely filed original return, including a group return.

(B) The income and apportionment factors of the nonelecting taxpayer is reflected in the self-assessed combined reporting group of a timely filed original return of an electing taxpayer, and the notification of election filed by the electing taxpayer pursuant to paragraph (2) of subdivision (a) is signed by an officer or other authorized agent of either

a parent corporation of the nonelecting taxpayer or another corporation with authority to bind the nonelecting taxpayer to an election.

(3) For purposes of this subdivision, a ''parent corporation'' of the taxpayer is a corporation that owns or constructively owns stock possessing more than 50 percent of the voting power of the taxpayer as determined under subdivisions (e) and (f) of Section 25105.

(4) If a corporation that is a member of a combined reporting group is not itself subject to taxation under this part in the year for which the water's-edge election is made, but subsequently becomes subject to taxation under this part, that corporation shall be deemed to have elected with the other taxpayer members of the combined reporting group.

(5) A taxpayer that is engaged in more than one apportioning trade or business as defined in paragraph (6) of subdivision (d) of Section 25128 may make a separate election for each apportioning trade or business.

(c) A water's-edge election shall remain in effect or be terminated in accordance with this subdivision.

(1) Except as otherwise provided in this subdivision, if one or more electing taxpayer members of a combined reporting group later become disaffiliated or otherwise cease to be included in the combined reporting group, the water's-edge election shall remain in effect as to both the departing taxpayer members and any remaining taxpayer members.

(2) If an electing taxpayer and a nonelecting taxpayer become members of a new unitary affiliate group, the nonelecting taxpayer shall be deemed to have elected if the value of the total business assets of the electing taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the nonelecting taxpayer, and its component unitary group, if any. Otherwise, the water's-edge election shall be automatically terminated at the time the electing members become part of the combined report. For purposes of applying paragraphs (9) and (10), the commencement date of the deemed election shall be the same as the commencement date of the electing taxpayers.

(3) If taxpayers filing under water's-edge elections with different commencement dates become members of a new unitary affiliate group, the earliest election date shall be deemed to apply to all electing taxpayers if the total business assets of the earlier electing taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the later electing taxpayer, and its component unitary group, if any. Otherwise, the later election commencement date shall apply to all electing taxpayers.

(4) (A) If a taxpayer with an election that has been terminated under paragraph (9) or (10) becomes a member of a new unitary affiliate group that includes another electing or nonelecting taxpayer not affected by those paragraphs, any water's-edge election of the other taxpayer member, if applicable, shall terminate, and any restrictions on making

a new water's-edge election, relating to an election terminated under those paragraphs, shall apply to all taxpayer members of the new unitary affiliate group if the total business assets of the taxpayer with the terminated election, and its component unitary group, if any, is larger than the other taxpayer, and its component unitary group, if any. Otherwise, paragraph (2) shall apply, if applicable. If paragraph (2) does not apply, all taxpayer members of the new unitary affiliate group will be treated as nonelecting taxpayers that are not subject to any restrictions on making a new water's-edge election.

(B) If two nonelecting taxpayers with different termination dates under paragraph (9) or (10) become members of a new unitary affiliate group, the earliest termination date shall be deemed to apply to all nonelecting taxpayers, as well as any restrictions on making a new water's-edge election relating to that termination, if the total business assets of the earlier terminating taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the later terminating taxpayer, and its component unitary group, if any. Otherwise, the later termination date, and the related restrictions on making a new water's-edge election, shall apply to all taxpayer members of the new unitary affiliate group.

(5) (A) Except as provided in subparagraph (B), if one or more electing taxpayers did not report their income and apportionment factors as members of a combined reporting group with one or more nonelecting taxpayers, and, pursuant to a Franchise Tax Board audit determination, the nonelecting taxpayers, are properly in the same combined reporting group as the electing taxpayers, the water's-edge election of the electing taxpayers shall remain in effect and the nonelecting taxpayers shall be deemed to have made a water's-edge election. The commencement date of the deemed water's-edge election shall be the same as the commencement date of the electing taxpayers.

(B) Subparagraph (A) shall not apply if the value of total business assets of the electing taxpayers does not exceed the value of total business assets of the nonelecting taxpayers. In that event, the water's-edge election of each electing taxpayer is terminated as of the date the nonelecting taxpayers are, pursuant to the audit determination described in subparagraph (A), properly included in the same combined reporting group as the electing taxpayers.

(C) For purposes of applying the business asset test of this paragraph, the term "business assets" shall have the same meaning as subparagraph (A) of paragraph (6), except that the business assets of other members of the unitary affiliate group that are not taxpayers shall not be taken into account.

(D) Notwithstanding subparagraph (A), nonelecting taxpayers may not be deemed to have made a water's-edge election if the Franchise Tax

Board audit determination described in subparagraph (A) is withdrawn or otherwise overturned.

(6) For purposes of paragraphs (2) to (5), inclusive, the following shall apply:

(A) ''Business assets'' are assets, including intangible assets, other than stock of a member of the unitary affiliate group, which are used in the conduct of the business of the unitary affiliate group or would produce business income to the unitary affiliate group, if an election were not in place, if the assets were sold. Business assets shall be valued at net book value.

(B) The phrase ''unitary affiliate group'' refers to all of those corporations that would constitute a unitary group if a water's-edge election were not made.

(C) The phrase ''new unitary affiliate group'' refers to a unitary affiliate group that is created by a new affiliation of two or more corporations, or by the addition of one or more new members to an existing unitary affiliate group.

(D) The phrase ''component unitary group'' means that portion of a group of corporations that have become members of a new unitary affiliate group that were members of their own respective unitary affiliate group prior to entering the new unitary affiliate group, disregarding any corporations that did not become part of the new unitary group.

(7) In the application of paragraphs (2) to (4), inclusive, a series of acquisitions as steps of a single transaction shall be aggregated as a single change of membership.

(8) In the event of a merger or consolidation, the water's-edge status and election commencement date or termination date of the surviving corporation shall be consistent with the result that would have been obtained under paragraphs (2) to (4), inclusive, if the surviving corporation had acquired the stock of the transferor corporation.

(9) A water's-edge election may be terminated without the consent of the Franchise Tax Board after it has been in effect for at least 84 months. The termination shall be made on an original, timely filed return for the first year in which the water's-edge election is to be terminated. To be effective, the termination shall be made by every taxpayer that is a member of the water's-edge group in the same manner as the election provided under subdivisions (a) and (b).

(10) A water's-edge election may be terminated before the 84-month period described in paragraph (9) has elapsed, but only with the consent of the Franchise Tax Board. A request for termination shall be made at the time and in the manner specified by the Franchise Tax Board. The request may be granted for good cause. For purposes of this section,

good cause shall have the same meaning as specified in Treasury Regulations Section 1.1502-75(c).

(11) Except for deemed elections as provided in paragraphs (2), (4), and (5), if a water's-edge election is terminated under paragraph (9) or (10), another election may not be made under this section for any taxable year that begins within the 84-month period following the last day of the election period that was terminated. The Franchise Tax Board may waive the application of this prohibition period for good cause.

(12) A water's-edge election shall remain in effect until terminated.

(d) For purposes of this section, the following shall apply:

(1) A ''combined reporting group'' means those corporations whose income and apportionment factors are properly considered pursuant to this chapter in computing the income of the individual taxpayer that is derived from or attributable to sources within this state, taking into account a valid water's-edge election.

(2) A ''group return'' refers to the single return which taxpayer members of a combined reporting group may elect by contract to file, in the form and manner prescribed by the Franchise Tax Board, in lieu of filing their own respective returns.

(3) A ''self-assessed combined reporting group'' means that group of corporations whose income and apportionment factors are reflected in a combined report prepared pursuant to this chapter in a timely filed return, taking into account the effects of a purported water's-edge election, whether or not the membership of the corporations in that combined report was correctly determined.

(e) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section.

(f) To the extent that a taxpayer would have been required to file on a water's-edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to a water's-edge election made in a prior year under Section 25111, the terms of Section 25111 shall not apply and the election shall be deemed to have been made under the terms of this section. However, the commencement date of the election made in a prior year under Section 25111 shall continue to be treated as the commencement date of the water's-edge election period for purposes of applying this section.

SEC. 11. Section 25116 is added to the Revenue and Taxation Code, to read:

25116. Notwithstanding paragraph (1) of subdivision (a) of Section 23051.5, when provisions of this article refer to provisions of the Internal Revenue Code that do not otherwise apply for purposes of Part 10.2 (commencing with Section 18401) or this part, the term ''Internal Revenue Code'' means Title 26 of the United States Code, including all

amendments thereto, as in effect for federal purposes for the taxable period, except as otherwise specifically provided in this article.

SEC. 12. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 634

An act to amend Sections 290 and 290.01 of, to amend and repeal Section 290.4, and to add Section 290.45 to, of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2003. Filed with Secretary of State September 30, 2003.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be

required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons

who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been

explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's

place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide

a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of

California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any

educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has

been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes

the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of

the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the

person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within

the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in

this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a

misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and

Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under

Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those

sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with

Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge,

be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall

transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking

documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or

agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of

the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons

subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register

pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as

one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon

release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law

enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision

(d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or

the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in Sections 290.4 and 290.45, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. Section 290.01 of the Penal Code is amended to read:

290.01. (a) (1) Commencing October 28, 2002, every person required to register under Section 290 who is enrolled as a student of any

university, college, community college, or other institution of higher learning, or is, with or without compensation, a full-time or part-time employee of that university, college, community college, or other institution of higher learning, or is carrying on a vocation at the university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall, in addition to the registration required by Section 290, register with the campus police department within five working days of commencing enrollment or employment at that university, college, community college, or other institution of higher learning, on a form as may be required by the Department of Justice. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit. The registrant shall also notify the campus police department within five working days of ceasing to be enrolled or employed, or ceasing to carry on a vocation, at the university, college, community college, or other institution of higher learning.

(2) For purposes of this section, a campus police department is a police department of the University of California, California State University, or California Community College, established pursuant to Section 72330, 89560, or 92600 of the Education Code, or is a police department staffed with deputized or appointed personnel with peace officer status as provided in Section 830.6 of the Penal Code and is the law enforcement agency with the primary responsibility for investigating crimes occurring on the college or university campus on which it is located.

(b) If the university, college, community college, or other institution of higher learning has no campus police department, the registrant shall instead register pursuant to subdivision (a) with the police of the city in which the campus is located or the sheriff of the county in which the campus is located if the campus is located in an unincorporated area or in a city that has no police department, on a form as may be required by the Department of Justice. The requirements of subdivisions (a) and (b) are in addition to the requirements of Section 290.

(c) A first violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000). A second violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. A third or subsequent violation of this section is 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.

(d) (1) (A) The following information regarding a registered sex offender on campus who is not described in paragraph (1) of subdivision (a) of Section 290.4 may be released to members of the campus community by any campus police department or, if the university, college, community college, or other institution of higher learning has no police department, the police department or sheriff's department with jurisdiction over the campus, and any employees of those agencies, as required by Section 1092(f)(1)(I) of Title 20 of the United States Code:

(i) The offender's full name.

(ii) The offender's known aliases.

(iii) The offender's gender.

(iv) The offender's race.

(v) The offender's physical description.

(vi) The offender's photograph.

(vii) The offender's date of birth.

(viii) Crimes resulting in registration under Section 290.

(ix) The date of last registration or reregistration.

(B) The authority provided in this subdivision is in addition to the authority of a peace officer or law enforcement agency to provide information about a registered sex offender pursuant to subdivisions (m) and (n) of Section 290 and subdivision (a) of Section 290.4, and exists notwithstanding subdivision (i) of Section 290, subdivision (c) of Section 290.4, or any other provision of law.

(2) Any law enforcement entity and employees of any law enforcement entity listed in paragraph (1) shall be immune from civil or criminal liability for good faith conduct under this subdivision.

(3) Nothing in this subdivision shall be construed to authorize campus police departments or, if the university, college, community college, or other institution has no police department, the police department or sheriff's department with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

(4) (A) Before being provided any information by an agency pursuant to this subdivision, a member of the campus community who requests that information shall sign a statement, on a form provided by the Department of Justice, stating that he or she is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the campus community to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use information obtained pursuant to this subdivision to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the agency's office for a minimum of five years.

(B) An agency disseminating printed information pursuant to this subdivision shall maintain records of the means and dates of dissemination for a minimum of five years.

(5) For purposes of this subdivision, ''campus community'' means those persons present at, and those persons regularly frequenting, any place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility that are regularly frequented by students, employees, or volunteers of the campus.

SEC. 3. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the attempted commission of any of these offenses; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a ''900'' telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the name or address of a listed person's employer, or the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the name or address of a listed person's employer, or the listed person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (b) of Section 290.45. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification

in the form of a California driver's license, California identification card, or military identification card and orders with proof of permanent assignment or attachment to a military command or vessel in California, showing the applicant to be at least 18 years of age. The applicant shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office. A person under 18 years of age may accompany an applicant who is that person's parent or legal guardian for the purpose of viewing the CD-ROM or other electronic medium.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the ''900'' telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the ''900'' telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the ''900'' telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the ''900'' telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the ''900'' telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Sections 290 and 290.45. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section, Section 290, 290.45, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as

otherwise authorized by subdivision (b) of Section 290.45. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes of relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the ''900'' telephone number in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the

appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by Section 290.45.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the ''900'' telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the ''900'' telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the ''900'' telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the ''900'' telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the ''900'' telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the ''900'' telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the ''900'' telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the ''900'' telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) On or before July 1, 2001, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(n) Agencies disseminating information to the public pursuant to this section shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years.

(o) This section shall remain operative only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 3.1. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; Section 269; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of

Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the attempted commission of any of these offenses; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, a photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a ''900'' telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the name or address of a listed person's employer, or the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above-listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) The department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except

the name or address of a listed person's employer, or the listed person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium, to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (b) of Section 290.45, except that school district police departments may receive the information only upon request. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriffs' departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license, California identification card, or military identification card and orders with proof of permanent assignment or attachment to a military command or vessel in California, showing the applicant to be at least 18 years of age. The applicant shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office. A person under 18 years of age may accompany an applicant who is that person's parent or legal guardian for the purpose of viewing the CD-ROM or other electronic medium.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the ''900'' telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the ''900'' telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the ''900'' telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the ''900'' telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the ''900'' telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Sections 290 and 290.45. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section, Section 290, 290.45, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (b) of Section 290.45. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes of relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.
(C) Loans.
(D) Credit.
(E) Employment.
(F) Education, scholarships, or fellowships.
(G) Housing or accommodations.
(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the ''900'' telephone number in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by Section 290.45.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the ''900'' telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the ''900'' telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the ''900'' telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the ''900'' telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the ''900'' telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the ''900'' telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the ''900'' telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the ''900'' telephone number that they will receive the

pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) On or before July 1, 2001, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(n) Agencies disseminating information to the public pursuant to this section shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years.

(o) This section shall remain operative only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 4. Section 290.45 is added to the Penal Code, to read:

290.45. (a) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under Section 290.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under Section 290.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(b) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the

meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a) of Section 290, and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) of Section 290 and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may

cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (d) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(c) Agencies disseminating information to the public pursuant to subdivision (b) shall maintain records of the means and dates of dissemination for a minimum of five years.

(d) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (a) or paragraph (4) of subdivision (b) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(e) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

SEC. 4.1. Section 290.45 is added to the Penal Code, to read:

290.45. (a) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under Section 290.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under Section 290.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(b) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of

the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a) of Section 290, and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; the police department of any campus of the University of California, California State University, or community college. ''Designated law enforcement entity'' shall also mean the police department of any school district, as defined in subdivision (b) of Section 830.32, except that nothing in this subdivision shall authorize these departments to make disclosures about registrants intended to reach persons beyond the school community.

(J) ''School community'' means those persons present at, those persons regularly frequenting, and the parents of any student attending, a school providing instruction in kindergarten or grades 1 to 12, inclusive, or any place associated with one of these schools. A place associated with a school includes campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the school for educational instruction, business, or school events; and

public areas contiguous to any school or facility that are frequented by students, employees, or volunteers of the school.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) of Section 290 and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (d) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(c) Agencies disseminating information to the public pursuant to subdivision (b) shall maintain records of the means and dates of dissemination for a minimum of five years.

(d) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the

Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (a) or paragraph (4) of subdivision (b) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(e) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

SEC. 5. The Department of Justice may develop a training program for police, sheriffs, and campus police departments explaining how information specified in paragraph (1) of subdivision (d) of Section 290.01 of the Penal Code may be disclosed.

SEC. 6. It is the intent of the Legislature in enacting this act to ensure that California universities, colleges, community colleges, and other institutions of higher learning maintain full eligibility for federal funds by complying with the provisions of Section 1092(f)(1)(I) of Title 20 of the United States Code.

SEC. 7. (a) Section 1.1 of this bill incorporate amendments to Sections 290 of the Penal Code proposed by both this bill and SB 356. 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 290 of the Penal Code, and (3) SB 879 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 356, in which case Sections 1, 1.2, 1.3, of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 879. 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 290 of the Penal Code, (3) SB 356 is not enacted or as enacted does not amend that

section, and (4) this bill is enacted after SB 879 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 290 of the Penal Code proposed by this bill, SB 356, and SB 879. 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 290 of the Penal Code, and (3) this bill is enacted after SB 356 and SB 879, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 8. Section 3.1 of this bill incorporates amendments to Section 290.4 of the Penal Code proposed by both this bill and SB 356. 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 290.4 of the Penal Code, and (3) this bill is enacted after SB 356, in which case Section 3 of this bill shall not become operative.

SEC. 9. Section 4.1 incorporates changes to Section 290.45 of the Penal Code proposed by this bill and SB 356. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) SB 356 amends Section 290 of the Penal Code, and (3) this bill is enacted after SB 356, in which case Section 4 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that California is in full compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and the Higher Education Act of 1965, as amended by

the Campus Sex Crimes Prevention Act, it is necessary that this act take effect immediately.

CHAPTER 635

An act to amend Sections 63010 and 63071 of, and to add Article 8 (commencing with Section 63049.6) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, to amend Sections 985, 1063, 1063.1, 1871.4, 11656.6 and 11873 of, to add Section 11742 to, to add Article 14.26 (commencing with Section 1063.70) to Chapter 1 of Part 2 of Division 1 of, and to add and repeal Section 11735.1 of, the Insurance Code, and to amend Section 62.5 of, to add Sections 4658.5 and 4658.6 to, to repeal Section 5405.5 of, to repeal Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of, and to repeal and add Section 139.5 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) ''Act'' means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) ''Bank'' means the California Infrastructure and Economic Development Bank.

(c) ''Board'' or ''bank board'' means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) ''Bond purchase agreement'' means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) ''Bonds'' means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or

beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) ''Cost,'' as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) ''Economic development facilities'' means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) ''Electrical corporation'' has the meaning set forth in Section 218 of the Public Utilities Code.

(i) ''Executive director'' means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) ''Financial assistance'' in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for

which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, ''grant'' does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) ''Financing order'' has the meaning set forth in Section 840 of the Public Utilities Code.

(*l*) ''Guarantee trust fund'' means the California Infrastructure Guarantee Trust Fund.

(m) ''Infrastructure bank fund'' means the California Infrastructure and Economic Development Bank Fund.

(n) ''Loan agreement'' means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) ''Participating party'' means any person, company, corporation, association, state or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) ''Project'' means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5

(commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) ''Public development facilities'' means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) ''City streets'' including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) ''County highways'' including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) ''Drainage, water supply, and flood control'' including, but not limited to, ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) ''Educational facilities'' including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) ''Environmental mitigation measures'' including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) ''Parks and recreational facilities'' including local parks, recreational property and equipment, parkways and property.

(7) ''Port facilities'' including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) ''Power and communications'' including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) ''Public transit'' including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) ''Sewage collection and treatment'' including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) ''Solid waste collection and disposal'' including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) ''Water treatment and distribution'' including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) ''Defense conversion'' including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) ''Public safety facilities'' including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) ''State highways'' including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(r) ''Rate reduction bonds'' has the meaning set forth in Section 840 of the Public Utilities Code.

(s) ''Revenues'' means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any

fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) ''Special purpose trust'' means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) ''Sponsor'' means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) ''State'' means the State of California.

(w) ''Transition costs'' has the meaning set forth in Section 840 of the Public Utilities Code.

(x) ''Transition property'' has the meaning set forth in Section 840 of the Public Utilities Code.

SEC. 2. Article 8 (commencing with Section 63049.6) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 8. Financing of Insurance Claims

63049.6. For purposes of this article, the following terms have the following meanings, in addition to the definitions contained in Section 63010, unless the context clearly indicates or requires another meaning:

(a) ''Association'' means the California Insurance Guaranty Association created pursuant to Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(b) ''Department'' means the Department of Insurance.

(c) ''Fund'' means the Insurance Assessment Bond Fund created by Section 1063.72 of the Insurance Code.

63049.62. Notwithstanding any other provision of this division, a financing of the costs of claims of insolvent insurers upon the request of the association pursuant to Section 1063.73 of the Insurance Code shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63041), Article 4 (commencing with Section 63042), Article 5 (commencing with Section 63043), Article 6 (commencing with Section 63048), and Article 7 (commencing with Section 63049) shall not apply to the financing provided by the bank to, or at the request of, the association or the department in connection with the fund. Notwithstanding any other provision of this division, the bank shall have no authority over any matter that is subject to the approval of the Insurance Commissioner under Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

63049.64. (a) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and may loan the proceeds thereof to the association, and deposit the proceeds into a separate account in the fund, or use the proceeds to refund bonds previously issued under this article. Bond proceeds may also be used to fund necessary reserves, capitalized interest, credit enhancement costs, or costs of issuance.

(b) Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the fund and other revenues and assets securing the bonds. All bonds issued under this article shall contain on the face of the bonds a statement to that effect.

(c) For purposes of this article, the term ''project,'' as defined in subdivision (p) of Section 63010, shall include financing of the costs of claims of insolvent workers' compensation insurers, in an amount (together with associated costs of financing) that may be determined by the association in making a request for financing to the bank.

63049.66. The fund, and any other fund or account established pursuant to the issuance of bonds authorized by this article may be

invested in any investment authorized pursuant to Section 63062, and any such fund or account shall be established outside of the centralized treasury system. The bank shall select as trustee for the bonds a corporation or banking association authorized to exercise corporate trust powers.

SEC. 3. Section 63071 of the Government Code is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds issued to finance public development facilities that may be outstanding at any one time under this chapter shall not exceed five billion dollars ($5,000,000,000). The total amount of rate reduction bonds that may be outstanding at any one time under this chapter shall not exceed ten billion dollars ($10,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 4. Section 985 of the Insurance Code is amended to read:

985. (a) On or after January 1, 1970, as used in this article and in subdivision (i) of Section 1011, ''insolvency'' means either of the following:

(1) Any impairment of minimum ''paid-in capital'' or ''capital paid in,'' as defined in Section 36, required in the aggregate of an insurer by the provisions of this code for the class, or classes, of insurance that it transacts anywhere.

(2) An inability of the insurer to meet its financial obligations when they are due.

(b) On or after January 1, 1970, an insurer cannot escape the condition of insolvency by being able to provide for all its liabilities and for reinsurance of all outstanding risks. An insurer must also be possessed of additional assets equivalent to such aggregate ''paid-in capital'' or ''capital paid in'' required by this code after making provision for all such liabilities and for such reinsurance.

(c) On or after October 1, 1967, as used in this code provision for reinsurance of all outstanding risks and ''gross premiums without any deduction, received and receivable upon all unexpired risks'' means the greater of: (1) the aggregate amount of actual unearned premiums, or (2) the amount reasonably estimated as being required to reinsure in a solvent admitted insurer the unexpired terms of the risks represented by all outstanding policies.

(d) On or after October 1, 1967, an insurer must make provision for reinsurance of the outstanding risk on policies that provide premiums are fully earned at inception and on policies that for any other reason do not provide for a return premium to the insured on cancellation prior to expiration.

(e) On or after October 1, 1967, the commissioner shall prescribe standards for reasonably estimating the amount required to reinsure that will provide adequate safeguards for the policyholders, creditors and the public.

(f) On or after October 1, 1967, this section shall not be applicable to life, title, mortgage or mortgage guaranty insurers.

(g) In the application of this section to disability insurance, as defined in Section 106, reserves for unearned premiums and amounts reasonably estimated as required to reinsure outstanding risks shall be determined in accordance with the provisions of Section 997.

SEC. 5. Section 1063 of the Insurance Code is amended to read:

1063. (a) Within 60 days after the original effective date of this article, all insurers, including reciprocal insurers, admitted to transact insurance in this state of any or all of the following classes only in accordance with the provisions of Chapter 1 (commencing with Section 100) of Part 1 of this division: fire (see Section 102), marine (see Section 103), plate glass (see Section 107), liability (see Section 108), workers' compensation (see Section 109), common carrier liability (see Section 110), boiler and machinery (see Section 111), burglary (see Section 112), sprinkler (see Section 114), team and vehicle (see Section 115), automobile (see Section 116), aircraft (see Section 118), and miscellaneous (see Section 120), shall establish the California Insurance Guarantee Association (the association); provided, however, this article shall not apply to the following classes or kinds of insurance: life and annuity (see Section 101), title (see Section 104), fidelity or surety including fidelity or surety bonds, or any other bonding obligations (see

Section 105), disability or health (see Section 106), credit (see Section 113), mortgage (see Section 117), mortgage guaranty, insolvency or legal (see Section 119), financial guaranty or other forms of insurance offering protection against investment risks (see Section 124), the ocean marine portion of any marine insurance or ocean marine coverage under any insurance policy including the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage, or reinsurance as defined in Section 620, or fraternal fire insurance written by associations organized and operating under Sections 9080 to 9103, inclusive. Any insurer admitted to transact only those classes or kinds of insurance excluded from this article shall not be a member insurer of the association. Each insurer admitted to transact a class of insurance included in this article, including the State Compensation Insurance Fund, as a condition of its authority to transact insurance in this state, shall participate in the association whether established voluntarily or by order of the commissioner after the elapse of 60 days following the original effective date of this article in accordance with rules to be established as provided in this article. It shall be the purpose of the association to provide for each member insurer insolvency insurance as defined in Section 119.5.

(b) The association shall be managed by a board of governors, composed of nine member insurers, each of which shall be appointed by the commissioner to serve initially for terms of one, two, or three years and thereafter for three-year terms so that three terms shall expire each year on December 31, and shall continue in office until his or her successor shall be appointed and qualified. At least five members of the board shall be domestic insurers. At least three of the members shall be stock insurers, and at least three shall be nonstock insurers. The nine members shall be representative, as nearly as possible, of the classes of insurance and of the kinds of insurers covered by this article. In case of a vacancy for any reason on the board, the commissioner shall appoint a member insurer to fill the unexpired term. In addition to the nine member insurers, the membership of the board shall also include one public member appointed by the President pro Tempore of the Senate, one public member appointed by the Speaker of the Assembly, one business member appointed by the commissioner, and one labor member appointed by the commissioner.

(c) The association shall adopt a plan of operations, and any amendments thereto, not inconsistent with the provisions of this article, necessary to assure the fair, reasonable, and equitable manner of administering the association, and to provide for other matters as are necessary or advisable to implement the provisions of this article. The

plan of operations and any amendments thereto shall be subject to prior written approval by the commissioner. All members of the association shall adhere to the plan of operation.

(d) If for any reason the association fails to adopt a suitable plan of operation within 90 days following the original effective date of this article, or if at any time thereafter the association fails to adopt suitable amendments to the plan of operation, the commissioner shall after hearing adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the commissioner after hearing or superseded by a plan of operation, adopted by the association and approved by the commissioner.

(e) In accordance with its plan of operation, the association may designate one or more of its members as a servicing facility, but a member may decline this designation. Each servicing facility shall be reimbursed by the association for all reasonable expenses it incurs and for all payments it makes on behalf of the association. Each servicing facility shall have authority to perform any functions of the association that the board of governors lawfully may delegate to it and to do so on behalf of and in the name of the association. The designation of servicing facilities shall be subject to the approval of the commissioner.

(f) The association shall have authority to borrow funds when necessary to effectuate the provisions of this article, and may provide in its plan of operations for any of the following:

(1) The issuance of notes, bonds, or debentures, or the establishment of a special purpose trust or other entity, solely for the purpose of facilitating a financing.

(2) The securing of that borrowing or those notes, bonds, or debentures by pledging or granting liens or mortgages, or by otherwise encumbering its real or personal property, including, but not limited to, premiums levied under Section 1063.5.

(g) The association, either in its own name or through servicing facilities, may be sued and may use the courts to assert or defend any rights the association may have by virtue of this article as reasonably necessary to fully effectuate the provisions thereof.

(h) The association shall have the right to intervene as a party in any proceeding instituted pursuant to Section 1016 wherein liquidation of a member insurer as defined in Section 1063.1 is sought.

(i) (1) The association shall have an annual audit of its financial condition conducted by an independent certified public accountant. The audit shall be conducted, to the extent possible, in accordance with generally accepted auditing standards (GAAS) and the report of the audit shall be submitted to the commissioner.

(2) The association shall annually audit at least one-third of the service companies retained by the association to adjust claims of insolvent insurers. The audits shall (A) assure that all covered claims are being investigated, adjusted, and paid in accordance with customary industry standards and practices and all applicable statutes, rules and regulations, and (B) examine the management and supervisory systems overseeing the claims functions. The audits shall be conducted by the association or an independent auditor, provided that the three largest service companies, as measured by the number of claims processed for the association during the previous three fiscal years, shall be audited by an independent auditor at least once every three years. The association shall implement systems to retain independent auditing firms for the purpose of this paragraph, provided that no one firm is designated or utilized as an exclusive provider. Audits conducted pursuant to this paragraph shall be submitted annually to the commissioner for review.

(j) The commissioner shall examine the association to the same extent as, and in accordance with, the requirements of Article 4 (commencing with Section 730) of Chapter 1 of Part 2 of Division 2, which sets forth the examination requirements applicable to admitted insurers. A copy of the examination report shall be filed with the Chairpersons of the Senate and Assembly Committees on Insurance no later than December 31 of the year the report is completed.

SEC. 6. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) ''Member insurer'' means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) ''Insolvent insurer'' means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) ''Covered claims'' means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or

insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) ''Covered claims'' also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. ''Covered claims'' under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) ''Covered claims'' does not include obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) ''Covered claims'' does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled

by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) ''Covered claims'' does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) ''Covered claims,'' except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) ''Covered claims'' does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) ''Covered claims'' does not include any amount awarded as punitive or exemplary damages, nor any amount awarded by the Workers' Compensation Appeals Board pursuant to Section 5814 or 5814.5 because payment of compensation was unreasonably delayed or refused by the insolvent insurer.

(9) ''Covered claims'' does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) ''Covered claims'' does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) ''Covered claims'' does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) ''Covered claims'' does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) ''Admitted to transact insurance in this state'' means an insurer possessing a valid certificate of authority issued by the department.

(e) ''Affiliate'' means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) ''Control'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) ''Claimant'' means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) ''Ocean marine insurance'' includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) ''Unearned premium'' means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. ''Unearned premium'' does not include any amount sought as return of a premium under any policy providing

retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 7. Article 14.26 (commencing with Section 1063.70) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.26. Workers' Compensation Bond Fund

1063.70. The California Insurance Guarantee Association is authorized to pay and discharge certain claims of insolvent insurers as defined in Section 1063.1 through the collection of premiums from its members, which amounts are limited by law and take time to assess and collect. This article provides for the ability of CIGA to request the issuance of bonds by the California Infrastructure and Economic Development Bank pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to more expeditiously and effectively provide for the payment of covered claims that arise as a result of the insolvencies of insurance companies providing workers' compensation insurance. The bonds are to be paid from the special bond assessments assessed by CIGA for those purposes and the other funds provided pursuant to Section 1063.74. Special bond assessments to repay bonds issued for payment of workers compensation benefits shall be assessed, to the extent necessary, for the claims category. It is a public purpose and in the best interest of the public health, safety, and general welfare of the residents of this state to provide for the issuance of bonds to pay claimants and policyholders having covered claims against insolvent insurers operating in this state.

1063.71. (a) The terms ''member insurer,'' ''insolvent insurer,'' and ''covered claims'' have the meanings assigned those terms in Section 1063.1.

(b) The terms ''CIGA,'' ''commissioner,'' ''board,'' and ''department'' have the meanings assigned those terms in Section 1063.51.

(c) ''Bank'' means the California Infrastructure and Economic Development Bank created pursuant to Article 1 (commencing with Section 63020) of Chapter 2, Division 1 of Title 6.7 of the Government Code.

(d) ''Bonds'' means bonds issued by the Bank pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to provide funds for the payment of the covered claims and the adjusting and defense expenses relating to those

claims that are issued at the request of the board pursuant to Section 1063.73.

(e) ''Collateral'' means the special bond assessments, the right of CIGA to be paid the special bond assessments, all revenues therefrom, the separate account of the Workers' Comp Bond Fund into which special bond assessments are deposited, and the proceeds thereof.

(f) ''Special bond assessment'' means the premiums collected by CIGA pursuant to Section 1063.74.

(g) ''Workers' Comp Bond Fund'' means the fund created pursuant to Section 1063.72.

1063.72. The Workers' Comp Bond Fund is hereby created. Proceeds from the sale of bonds shall be deposited in a separate account in the Workers' Comp Bond Fund. Only CIGA, and with respect to payment of the bonds, the trustee for the bonds, shall have the ability to authorize disbursements from the separate account. Special bond assessments shall be deposited in a separate account in the Workers' Comp Bond Fund and shall not be commingled with any other moneys. Only the trustee for the bonds shall have the ability to authorize disbursements from this separate account, and CIGA shall have no right or authority to authorize disbursements from this separate account. The Workers' Comp Bond Fund shall be maintained with the trustee for the bonds. Following payment or provision for payment of the bonds, amounts in the Workers' Comp Bond Fund shall be transferred to the fund that is designated in the indenture. All money in the Workers' Comp Bond Fund and all special bond assessments shall be used by CIGA for the exclusive purpose of carrying out the purposes of this part, and, notwithstanding any other provisions of law, the Workers' Comp Bond Fund shall not be a state fund, shall not be subject to the rules or procedures of any fund in the State Treasury, and application of the fund shall not be subject to the supervision or budgetary approval of any officer or division of state government. CIGA and the trustee for the bonds may as necessary or convenient to the accomplishment of any other purpose under this article, divide the fund into separate accounts.

1063.73. In the event CIGA determines that the insolvency of one or more member insurers providing workers' compensation insurance will result in covered claim obligations for workers' compensation claims in excess of CIGA's capacity to pay from current funds, the board, in its sole discretion, may by resolution request the Bank to issue bonds pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to provide funds for the payment of the covered claims and the adjusting and defense expenses relating to those claims. Notwithstanding any other provision of law, CIGA is hereby authorized to borrow proceeds of the bonds to provide for those purposes. CIGA may request the Bank to issue bonds

pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code. CIGA shall provide the commissioner with a copy of the request and the commissioner may, within 30 days of receipt of the request, modify, cancel, or require a delay in the requested issuance. The proceeds of bonds issued for workers' compensation benefits may be used by CIGA to reimburse funds advanced or temporarily loaned from other categories to fund workers' compensation claims.

1063.74. (a) Notwithstanding any other limits on assessments, CIGA shall have the authority to levy upon member insurers special bond assessments in the amount necessary to pay the principal of and interest on the bonds, and to meet other requirements established by agreements relating to the bonds. The assessments shall be collected only from the member insurers providing workers' compensation insurance, in the same manner as separate premium payments are used to pay the claims and costs allocated to that category pursuant to Section 1063.5. Special bond assessments made pursuant to this section shall also be subject to the surcharge provisions in Sections 1063.14 and 1063.145.

(b) In addition to the special bond assessments provided for in this section, the board in its discretion and subject to other obligations of the association, may utilize current funds of CIGA, premium assessments made under Section 1063.5, and advances or dividends received from the liquidators of insolvent insurers to pay the principal and interest on any bonds issued at the board's request and shall utilize, to the extent feasible, the recoveries from the liquidators of the estates of insolvent workers' compensation carriers to pay bonds issued at the board's request to fund workers' compensation claims.

1063.75. Any bonds issued to provide funds for covered claim obligations for workers' compensation claims shall be issued prior to January 1, 2007, in an aggregate principal amount outstanding at any one time not to exceed $1.5 billion, and any bonds issued or issued to refund bonds shall not have a final maturity exceeding twenty years from the date of issuance. The bonds shall be issued at the request of CIGA, shall be in the form, shall bear the date or dates, and shall mature at the time or times as the indenture authorized by the request may provide. The bonds may be issued in one or more series, as serial bonds or as term bonds, or as a combination thereof, and, notwithstanding any other provision of law, the amount of principal of, or interest on, bonds maturing at each date of maturity need not be equal. The bonds shall bear interest at the rate or rates, variable or fixed or a combination thereof, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be

subject to the terms of redemption, contain the terms and conditions, and be secured by the covenants as the indenture may provide. The indenture may provide for the proceeds of the bonds and funds securing the bonds to be invested in any securities and investments, including investment agreements, as specified therein. CIGA may enter into or authorize any ancillary obligations or derivative agreements as it determines necessary or desirable to manage interest rate risk or security features related to the bonds. The bonds shall be sold at public or private sale by the Treasurer at, above, or below the principal amount thereof, on the terms and conditions and for the consideration in the medium of payment that the Treasurer shall determine prior to the sale.

1063.76. (a) The collateral shall be used solely for the purpose of paying the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, and shall not be used for any other purpose. Member insurers shall pay the special bond assessments directly to the trustee for the bonds. Any collateral in the possession of CIGA shall be held by CIGA in trust for the benefit of the trustee for the bonds.

(b) Upon the issuance of the first bond, the collateral shall be subject to a first priority statutory lien in favor of the trustee for the bonds, for the benefit of the holders of the bonds and the parties to the contracts entered into pursuant to Section 1063.77, to secure the payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77. This lien shall arise by operation of law automatically without any action on the part of CIGA, the bank, or any other person. This lien is a continuous lien on all collateral effective from the time the first bond is issued, whether or not a particular item of collateral exists at the time of the issuance. From the time the first bond is issued, this lien shall be valid, effective, prior, perfected, binding, and enforceable against CIGA, its successors, purchasers of the collateral, creditors, and all others asserting rights in the collateral, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. Upon default in the payment of the principal or redemption price of, or interest on, the bonds, or any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, the trustee for the bonds shall be entitled to foreclose or otherwise enforce this lien on the collateral.

(c) No person acting under any provision of law or principle of equity shall be permitted in any way to impede or in any manner interfere with (1) the full and timely payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, or (2) the statutory lien created by this section and the full and timely application of the

collateral to the payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77.

(d) None of the collateral shall be subject to garnishment, levy, execution, attachment, or other process, writ (including writ of mandate), or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the department, the commissioner, the bank, CIGA, or the board, nor shall any of the collateral be subject to the claims of any creditor of the state, the department, the commissioner, the bank, CIGA, or the board. This paragraph shall not limit the rights or remedies of the trustee for the bonds, the holders of the bonds, or the parties to contracts entered into pursuant to Section 1063.77.

(e) As long as any bond is outstanding, CIGA shall not be subject to Article 14 (commencing with Section 1010) or Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

1063.77. CIGA is authorized to enter into those contracts or agreements with those banks, insurers, or other financial institutions or parties that it determines are necessary or desirable to improve the security and marketability of, or to manage interest rates or other risks associated with, the bonds issued pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code. Those contracts or agreements may contain an obligation to reimburse, with interest, any of those banks, insurers, or other financial institutions or parties for advances used to pay the purchase price of, or principal or interest on, the bonds or other obligations.

SEC. 8. Section 1871.4 of the Insurance Code is amended to read:

1871.4. (a) It is unlawful to do any of the following:

(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

(4) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

For the purposes of this subdivision, ''statement'' includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in county jail for one year, or in the state prison, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars ($150,000) or double the value of the fraud, whichever is greater, or by both imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

SEC. 9. Section 11656.6 of the Insurance Code is amended to read:

11656.6. An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if the organization or association complies with the following conditions:

(a) Files with the commissioner or a licensed workers' compensation rating organization designated by him or her the following:

(1) A copy of its articles of incorporation and bylaws or its agreement of association and rules and regulations governing the conduct of its business, all certified by the custodian of the originals thereof.

(2) A statement setting forth its reasons for desiring insurance as a group.

(3) A statement certifying that at least 75 percent of its regular membership is engaged in a common trade or business, and an agreement that the percentage of membership will be maintained during the time that a group workers' compensation policy issued to the organization or association is in force.

(4) An agreement that only those members who are engaged in a common trade or business shall be named by the organization or association in any statement to the commissioner, a licensed workers' compensation rating organization, or an insurer as eligible for insurance as a member of the group, and an agreement that it will immediately notify its insurer if any member of the organization fails to remain a member in good standing in accordance with the basic law, rules, and regulations of the organization or association.

(5) A statement in writing undertaking to establish and maintain a safety committee which, by education and otherwise, will seek to reduce the incidence and severity of accidents.

(6) An agreement in writing duly executed stating that, if the insurer notifies the organization or association of the nonpayment of a premium by an insured member of the organization or association within 60 days after the premium was due, the organization or association may be liable to pay to the insurer the amount of any past due premium that does not exceed the amount of the dividends that are due to the organization or association or its members from the insurer.

However, this agreement shall not be required, nor shall an organization or association be liable for payment, unless the governing board of the organization or association and the insurer agree in writing to use dividends due for the payment of past due premiums. The organization or association shall promptly notify the insurer of the known insolvency of any member of the group plan, and shall request, upon learning of the insolvency, removal of the member from the group plan. A copy of the resolution of the governing board of the organization or association authorizing the execution of the agreement shall be filed with the commissioner or a licensed workers' compensation rating organization designated by the commissioner and with any insurer issuing a group policy.

(b) ''Common trade or business,'' as used in this article, shall mean:

(1) In agricultural enterprises, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates

of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to farms, nurserymen, cultivating or gardening of flowers, and classifications embracing other operations that may be conducted by a nonprofit cooperative association composed of producer members and combinations of nonprofit cooperative agricultural marketing associations having a central organization composed of member associations.

(2) In the building and construction industry, operations in the construction or repair of commercial or residential buildings or in general engineering construction in which the principal payroll develops under any combination of the classifications applicable to the construction or repair as they appear in the Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance approved by the Insurance Commissioner. Commercial buildings, as defined in this paragraph, shall mean any nonresidential buildings.

(3) In the transportation and warehousing industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to for-hire motor carriers subject to regulation by the Public Utilities Commission and warehousemen.

(4) In the timber and lumber industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to land clearing, logging or lumbering, log, chip, and lumber hauling, planing or molding mills, sawmills or shingle mills, veneer or veneer products manufacturing, box or box shook manufacturing, cabinet works, door, doorframe, or sash manufacturing, and wood fiber preparation. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of this subdivision shall be included in any combination of classifications authorized by this paragraph.

(5) For public agencies providing industrial, domestic, or agricultural water service, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to irrigation, drainage, reclamation, or waterworks operations.

(6) For sheltered workshops and rehabilitation facilities licensed pursuant to Section 1191.5 of the Labor Code, operations in which the principal payroll of the employer develops under any combination of classifications of the Manual of Rules, Classifications and Basic Rates

of Workers' Compensation Insurance approved by the Insurance Commissioner.

(7) For all other enterprises, operations in which the principal payroll develops under a single manual classification or a combination of classifications under which a group policy may be issued pursuant to subdivision (d).

(8) For manufacturing facilities as identified in Sector 31 to 33, inclusive, of the North American Industry Classification System (NAICS), operations in which the principal payroll of the employer develops under any combination of classifications of the Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner applicable to establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.

(c) Except as provided in subdivision (d), ''principal payroll,'' for the purpose of this section, means not less than 51 percent of the total payroll for the preceding policy year or, in the case of an employer who has no preceding full year's payroll, not less than 51 percent of his or her estimated annual payroll. Principal or estimated annual payroll shall not include the payroll of those employees set forth in the standard exceptions contained in the California Workers' Compensation Insurance Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance approved by the commissioner.

(d) An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if in addition to complying with the conditions set forth in subdivision (a), the organization or association has had at least 50 percent of its present membership for at least one year prior to the issuance of the policy, and not less than 75 percent of the payroll of each employer to be insured under the group policy developed under the same two manual classifications, or either of them, for the preceding policy year or, in the case of an employer who has had no preceding full-year's payroll, not less than 75 percent of his estimated annual payroll develops under the classification or classifications. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of subdivision (b) shall be included in any combination of classifications authorized by this subdivision.

SEC. 10. Section 11735.1 is added to the Insurance Code, to read:

11735.1. (a) In determining the advisory pure premium rates for policies incepting on or after January 1, 2004, pursuant to a hearing required by subdivision (b) of Section 11750, the Insurance Commissioner shall take into account projected savings due to changes enacted in the 2003–04 Regular Session.

(b) Insurers shall file rates to apply to policies incepting on or after January 1, 2004, that include the provision for projected savings determined by the Insurance Commissioner pursuant to subdivision (a), provided, however, that these rates shall comply with Section 11732.

(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. 11. Section 11742 is added to the Insurance Code, to read:

11742. (a) The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and led to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rate.

(b) On or before July 1, 2004, the commissioner shall establish and maintain, on the Internet Web site maintained by the department, an online rate comparison guide showing workers' compensation insurance rates for the 50 insurance companies writing the highest volume of business in this line during the two preceding years.

(c) The online comparison shall display rates for each class set forth in the classification system adopted by the commissioner pursuant to Section 11734, shall include the effective date of each rate, and shall list the rates for each class from the lowest to the highest rate.

(d) The rating organization designated by the commissioner as his or her statistical agent pursuant to Section 11751.5 shall determine the cost savings achieved in the 2003 workers' compensation reform legislation. Each insurer shall certify, in the form and manner determined by the commissioner, that its rates reflect those cost savings. The certifications shall be made available to the public on the Internet Web site maintained by the department.

SEC. 12. Section 11873 of the Insurance Code is amended to read:

11873. (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.

(b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, and Division 5 (commencing with Section 18000) of Title 2 of, the Government Code, with the exception of all of the following:

(1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5 of Title 2 of the Government Code.

(2) Sections 19849.2, 19849.3, 19849.4, and 19849.5 of the Government Code.

(3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5 of Title 2 of the Government Code.

(c) Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. This subdivision is declaratory of existing law.

SEC. 13. Section 62.5 of the Labor Code is amended to read:

62.5. (a) (1) 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.

(2) The fund shall consist of assessments made pursuant to subdivision (d). Employer assessments shall account for the total costs of the program.

(3) It is the intent of the Legislature that a sufficient portion of the fund shall be allocated to the following priority initiatives:

(A) Implementation of the fraudulent claim reporting and medical fee schedule reporting provisions contained in Sections 3823 and 5307.1.

(B) Implementation of a clerical upgrade to promote adequate staffing and clerical employee retention necessary to support the judicial system of the Workers' Compensation Appeals Board.

(C) The development of a cost-efficient electronic adjudication management system.

(b) (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 (d). 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.

(c) (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 (d). 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.

(d) (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. 14. Section 139.5 of the Labor Code is repealed.

SEC. 14.2. Section 139.5 is added to the Labor Code, to read:

139.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools, as follows:

(1) Up to four thousand dollars ($4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars ($6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars ($8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars ($10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability the employer shall provide to the employee in the form and manner prescribed by the administrative director information that provides

notice of rights under this section. This notice shall be sent by certified mail.

(d) This section shall apply to injuries occurring on or after January 1, 2004.

SEC. 14.3. Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of the Labor Code is repealed.

SEC. 14.4. Section 4658.5 is added to the Labor Code, to read:

4658.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools, as follow:

(1) Up to four thousand dollars ($4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars ($6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars ($8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars ($10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail.

(d) This section shall apply to injuries occurring on or after January 1, 2004.

SEC. 15. Section 4658.6 is added to the Labor Code, to read:

4658.6. The employer shall not be liable for the supplemental job displacement benefit if the employer meets either of the following conditions:

(a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or

fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

(b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:

(1) The employee has the ability to perform the essential functions of the job provided.

(2) The job provided is in a regular position lasting at least 12 months.

(3) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.

(4) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

SEC. 16. Section 5405.5 of the Labor Code is repealed.

SEC. 17. (a) The Legislature finds and declares that to ensure that injured workers are fairly treated, receive prompt and adequate disability benefits, and have access to quality health care, a stable and predictable workers' compensation system is required.

(b) It is the intent of the Legislature to ensure a stable and predictable workers' compensation market in California.

(c) Accordingly, the Commission on Health Safety and Workers' Compensation shall study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the workers' compensation insurance market, to be phased in over a five-year period.

SEC. 18. This act shall become operative only if Senate Bill 228 of the 2003–04 Regular Session is enacted on or before January 1, 2004.

SEC. 19. 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 636

An act to amend Sections 1877.1, 1877.3, 1877.4, and 1877.5, of the Insurance Code, relating to insurance fraud.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 1877.1 of the Insurance Code is amended to read:

1877.1. The following definitions govern the construction of this article, unless the context requires otherwise:

(a) ''Authorized governmental agency'' means the district attorney of any county, the office of the Attorney General, the Department of Insurance, the Department of Industrial Relations, the Employment Development Department, and any licensing agency governed by the Business and Professions Code.

(b) ''Relevant'' means having a tendency to make the existence of any fact that is of consequence to the investigation or determination of an issue more probable or less probable than it would be without the information.

(c) ''Insurer'' means an insurer admitted to transact workers' compensation insurance in this state, the State Compensation Insurance Fund, an employer that has secured a certificate of consent to self-insure pursuant to subdivision (b) or (c) of Section 3700 of the Labor Code, or a third-party administrator that has secured a certificate pursuant to Section 3702.1 of the Labor Code.

(d) ''Licensed rating organization'' means a rating organization licensed by the Insurance Commissioner pursuant to Section 11750.1.

(e) Information shall be deemed important if, within the sole discretion of the authorized governmental agency, that information is requested by that authorized governmental agency.

SEC. 2. Section 1877.3 of the Insurance Code is amended to read:

1877.3. (a) Upon written request to an insurer or a licensed rating organization by an authorized governmental agency, an insurer, an agent authorized by that insurer, or a licensed rating organization to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer or licensed rating organization may possess relating to any specific workers' compensation insurance fraud investigation.

(b) (1) When an insurer or licensed rating organization knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agent authorized by an insurer to act on its behalf, or licensed rating organization shall notify the local district

attorney's office and the Bureau of Fraudulent Claims of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer or licensed rating organization shall state in its notice the basis of the suspected fraud.

(2) Insurers shall use a form prescribed by the department for the purposes of reporting suspected fraudulent workers' compensation acts pursuant to this subdivision.

(3) Nothing in this subdivision shall abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a), (b), or (e) may release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud.

(d) An insurer or licensed rating organization providing information to an authorized governmental agency pursuant to this section shall provide the information within a reasonable time, but not exceeding 30 days from the day on which the duty arose.

(e) Upon written request by an authorized governmental agency, as specified in subdivision (o) of Section 1095 of the Unemployment Insurance Code, the Employment Development Department shall release to the requesting agency any or all relevant information that the Employment Development Department may possess relating to any specific workers' compensation insurance fraud investigation. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 of the Unemployment Insurance Code and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

SEC. 3. Section 1877.4 of the Insurance Code is amended to read:

1877.4. (a) Any information acquired pursuant to this article shall not be a part of the public record. Except as otherwise provided by law, any authorized governmental agency, an insurer, or an agent authorized to act on its behalf, which receives any information furnished pursuant to this article shall not release that information to any person not authorized to receive the information under this article. Any person who violates the prohibition of this subdivision is guilty of a misdemeanor.

(b) The evidence or information described in this section shall be privileged and shall not be subject to subpoena or subpoena duces tecum in a civil or criminal proceeding, unless, after reasonable notice to any insurer, an agent authorized by an insurer to act on its behalf, licensed rating organization, or authorized governmental agency which has an interest in the information, and a hearing, the court determines that the public interest and any ongoing investigation by the authorized governmental agency, insurer, or an agent authorized by the insurer to act on its behalf, or licensed rating organization will not be jeopardized by its disclosure, or by the issuance of and compliance with a subpoena or subpoena duces tecum.

SEC. 4. Section 1877.5 of the Insurance Code is amended to read:

1877.5. No insurer, agent authorized by an insurer to act on its behalf, or licensed rating organization who furnishes information, written or oral, pursuant to this article, and no authorized governmental agency or its employees who (a) furnishes or receives information, written or oral, pursuant to this article, or (b) assists in any investigation of a suspected violation of Section 1871.1, 1871.4, 11760, or 11880, or of Section 549 of the Penal Code, or of Section 3215 or 3219 of the Labor Code conducted by an authorized governmental agency, shall be subject to any civil liability in a cause or action of any kind where the insurer, authorized agent, licensed rating organization, or authorized governmental agency acts in good faith, without malice, and reasonably believes that the action taken was warranted by the then known facts, obtained by reasonable efforts. Nothing in this chapter is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer, agent authorized by that insurer to act on its behalf, licensed rating organization, or any authorized governmental agency or its employees.

CHAPTER 637

An act to add Article 5 (commencing with Section 11761) to Chapter 3 of Part 3 of Division 2 of the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Article 5 (commencing with Section 11761) is added to Chapter 3 of Part 3 of Division 2 of the Insurance Code, to read:

Article 5. Standards Applicable to Claims Adjusters

11761. (a) The commissioner shall adopt regulations setting forth the minimum standards of training, experience, and skill that workers' compensation claims adjusters must possess to perform their duties with regard to workers' compensation claims. The regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs.

(b) Every insurer shall certify to the commissioner that the personnel employed by the insurer to adjust workers' compensation claims, or employed for that purpose by any medical billing entity with which the insurer contracts, meet the minimum standards adopted by the commissioner pursuant to subdivision (a).

(c) For the purposes of this section, ''medical billing entity'' means a third party that reviews or adjusts workers' compensation medical bills for insurers.

(d) For the purposes of this section, ''insurer'' means an insurer admitted to transact workers' compensation insurance in this state, the State Compensation Insurance Fund, an employer that has secured a certificate of consent to self-insure pursuant to subdivision (b) or (c) of Section 3700 of the Labor Code, or a third-party administrator that has secured a certificate of consent pursuant to Section 3702.1 of the Labor Code.

CHAPTER 638

An act to add Section 4610.1 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 4610.1 is added to the Labor Code, to read:

4610.1. An employee shall not be entitled to an increase in compensation under Section 5814 for unreasonable delay in the provision of medical treatment for periods of time necessary to complete the utilization review process in compliance with Section 4610. A determination by the appeals board that medical treatment is appropriate shall not be conclusive evidence that medical treatment was unreasonably delayed or denied for purposes of penalties under Section

5814. In no case shall this section preclude an employee from entitlement to an increase in compensation under Section 5814 when an employer has unreasonably delayed or denied medical treatment due to an unreasonable delay in completion of the utilization review process set forth in Section 4610.

SEC. 2. This act shall become operative only if Senate Bill 228 of the 2003–04 Regular Session is enacted and becomes operative.

CHAPTER 639

An act to amend Section 12813 of the Government Code, and to amend Sections 29, 110, 122, 124, 127.6, 138.1, 139.2, 139.3, 139.31, 139.4, 139.45, 4061, 4062.5, 4062.9, 4068, 4603.2, 4603.4, 4628, 5307.3, 5703, and 6401.7 of, to add Sections 77.5, 3823, 4062.01, 4604.5, 4610, 4903.05, and 5307.27 to, to repeal Sections 139, 139.1, and 5307.21 of, to repeal and add Sections 3201.7, 4600.1, 5307.1, 5307.2, and 5318 of, and to repeal, add, and repeal Section 4062 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 12813 of the Government Code is amended to read:

12813. The Labor and Workforce Development Agency consists of the following:

(a) Office of the Secretary of Labor and Workforce Development.

(b) Agricultural Labor Relations Board.

(c) California Workforce Investment Board.

(d) Department of Industrial Relations, including the California Apprenticeship Council, California Occupational Safety and Health Appeals Board, California Occupational Safety and Health Standards Board, Commission on Health and Safety and Workers' Compensation, Industrial Welfare Commission, State Compensation Insurance Fund, and Workers' Compensation Appeals Board.

(e) Employment Development Department, including the California Unemployment Insurance Appeals Board, and the Employment Training Panel.

SEC. 2. Section 29 of the Labor Code is amended to read:

29. ''Medical director'' means the physician appointed by the administrative director pursuant to Section 122.

SEC. 3. Section 77.5 is added to the Labor Code, to read:

77.5. (a) On or before July 1, 2004, the commission shall conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems. The survey shall be updated periodically.

(b) On or before October 1, 2004, the commission shall issue a report of its findings and recommendations to the administrative director for purposes of the adoption of a medical treatment utilization schedule.

SEC. 4. Section 110 of the Labor Code is amended to read:

110. As used in this chapter:

(a) ''Appeals board'' means the Workers' Compensation Appeals Board. The title of a member of the board is ''commissioner.''

(b) ''Administrative director'' means the Administrative Director of the Division of Workers' Compensation.

(c) ''Division'' means the Division of Workers' Compensation.

(d) ''Medical director'' means the physician appointed by the administrative director pursuant to Section 122.

(e) ''Qualified medical evaluator'' means physicians appointed by the administrative director pursuant to Section 139.2.

(f) ''Court administrator'' means the administrator of the workers' compensation adjudicatory process at the trial level.

SEC. 5. Section 122 of the Labor Code is amended to read:

122. The administrative director shall appoint a medical director who shall possess a physician's and surgeon's certificate granted under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. The medical director shall employ medical assistants who shall also possess physicians' and surgeons' certificates and other staff necessary to the performance of his or her duties. The salaries for the medical director and his or her assistants shall be fixed by the Department of Personnel Administration, commensurate with the salaries paid by private industry to medical directors and assistant medical directors.

SEC. 6. Section 124 of the Labor Code is amended to read:

124. (a) In administering and enforcing this division and Division 4 (commencing with Section 3200), the division shall protect the interests of injured workers who are entitled to the timely provision of compensation.

(b) Forms and notices required to be given to employees by the division shall be in English and Spanish.

SEC. 7. Section 127.6 of the Labor Code is amended to read:

127.6. (a) The administrative director shall, in consultation with the Commission on Health and Safety and Workers' Compensation,

other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses. The study shall focus on, but not be limited to, all of the following:

(1) Factors contributing to the rising costs and utilization of medical treatment and case management in the workers' compensation system.

(2) An evaluation of case management procedures that contribute to or achieve early and sustained return to work within the employee's temporary and permanent work restrictions.

(3) Performance measures for medical services that reflect patient outcomes.

(4) Physician utilization, quality of care, and outcome measurement data.

(5) Patient satisfaction.

(b) The administrative director shall begin the study on or before July 1, 2003, and shall report and make recommendations to the Legislature based on the results of the study on or before July 1, 2004.

(c) In implementing this section, the administrative director shall ensure the confidentiality and protection of patient-specific data.

SEC. 7.5. Section 138.1 of the Labor Code is amended to read:

138.1. (a) The administrative director shall be appointed by the Governor with the advice and consent of the Senate and shall hold office at the pleasure of the Governor. He or she shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The court administrator shall be appointed by the Governor with the advice and consent of the Senate. The court administrator shall hold office for a term of five years. The court administrator shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 8. Section 139 of the Labor Code is repealed.

SEC. 9. Section 139.1 of the Labor Code is repealed.

SEC. 10. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The administrative director 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 administrative director 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 administrative director 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 administrative director. The administrative director 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 administrative director 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 administrative director 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 administrative director, 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 administrative director. 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 administrative director.

(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 administrative director 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 administrative director 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 administrative director.

(2) Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a contested hearing rejected by the workers' compensation administrative law 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 workers' compensation administrative law 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 administrative director or the appeals board, the workers' compensation administrative law 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 administrative director. 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 administrative director.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the administrative director during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the administrative director may in his or her discretion reappoint or deny reappointment according to regulations adopted by the administrative director. 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 administrative director may, in his or her 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 administrative director pursuant to subdivision (n).

(f) The administrative director 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 administrative director shall review his or her 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 administrative director 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 administrative director 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 workers' compensation administrative law 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 administrative director 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 administrative director 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 5307.3, the administrative director shall adopt regulations concerning the following 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 administrative director 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 administrative director 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. 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 Insurance Commissioner, or deemed appropriate by the administrative director.

(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 administrative director may, in his or her discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the administrative director, 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 pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established 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 administrative director 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 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 administrative director 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 administrative director may, in his or her discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The administrative director shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The administrative director 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 administrative director 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 administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and 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 programs the Division of Workers' Compensation related to the provision of medical treatment to injured employees.

(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 Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

SEC. 11. Section 139.3 of the Labor Code is amended to read:

139.3. (a) Notwithstanding any other provision of law, to the extent those services are paid pursuant to Division 4 (commencing with Section 3200), it is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, outpatient surgery, or diagnostic imaging goods or services whether for treatment or medical-legal purposes if the physician or his

or her immediate family, has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 139.31, the following shall apply:

(1) ''Diagnostic imaging'' includes, but is not limited to, all X-ray, computed axial tomography magnetic resonance imaging, nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) ''Immediate family'' includes the spouse and children of the physician, the parents of the physician, and the spouses of the children of the physician.

(3) ''Physician'' means a physician as defined in Section 3209.3.

(4) A ''financial interest'' includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the physician refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect relationship between a physician and the referral recipient, including, but not limited to, an arrangement whereby a physician has an ownership interest in any entity that leases property to the referral recipient. Any financial interest transferred by a physician to, or otherwise established in, any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the physician.

(5) A ''physician's office'' is either of the following:

(A) An office of a physician in solo practice.

(B) An office in which the services or goods are personally provided by the physician or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when that licensure or certification is required by law.

(6) The ''office of a group practice'' is an office or offices in which two or more physicians are legally organized as a partnership, professional corporation, or not-for-profit corporation licensed according to subdivision (a) of Section 1204 of the Health and Safety Code for which all of the following are applicable:

(A) Each physician who is a member of the group provides substantially the full range of services that the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group, and except that in the case of multispecialty clinics, as defined in subdivision (*l*) of Section 1206 of the Health and Safety Code, physician services are billed in the name of the multispecialty clinic and amounts so received are treated as receipts of the multispecialty clinic.

(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(7) Outpatient surgery includes both of the following:

(A) Any procedure performed on an outpatient basis in the operating rooms, ambulatory surgery rooms, endoscopy units, cardiac catheterization laboratories, or other sections of a freestanding ambulatory surgery clinic, whether or not licensed under paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code.

(B) The ambulatory surgery itself.

(c) (1) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(2) It shall be unlawful for a physician to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for a referred evaluation or consultation.

(d) No claim for payment shall be presented by an entity to any individual, third-party payor, or other entity for any goods or services furnished pursuant to a referral prohibited under this section.

(e) A physician who refers to or seeks consultation from an organization in which the physician has a financial interest shall disclose this interest to the patient or if the patient is a minor, to the patient's parents or legal guardian in writing at the time of the referral.

(f) No insurer, self-insurer, or other payor shall pay a charge or lien for any goods or services resulting from a referral in violation of this section.

(g) A violation of subdivision (a) shall be a misdemeanor. The appropriate licensing board shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars ($5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district

attorney. A violation of subdivision (c), (d), (e), or (f) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars ($15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.

SEC. 12. Section 139.31 of the Labor Code is amended to read:

139.31. The prohibition of Section 139.3 shall not apply to or restrict any of the following:

(a) A physician may refer a patient for a good or service otherwise prohibited by subdivision (a) of Section 139.3 if the physician's regular practice is where there is no alternative provider of the service within either 25 miles or 40 minutes traveling time, via the shortest route on a paved road. A physician who refers to, or seeks consultation from, an organization in which the physician has a financial interest under this subdivision shall disclose this interest to the patient or the patient's parents or legal guardian in writing at the time of referral.

(b) A physician who has one or more of the following arrangements with another physician, a person, or an entity, is not prohibited from referring a patient to the physician, person, or entity because of the arrangement:

(1) A loan between a physician and the recipient of the referral, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, is adequately secured, and the loan terms are not affected by either party's referral of any person or the volume of services provided by either party.

(2) A lease of space or equipment between a physician and the recipient of the referral, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either party's referral of any person or the volume of services provided by either party.

(3) A physician's ownership of corporate investment securities, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the physician's referral of persons to the corporation, do not have a separate class or accounting for any persons or for any physicians who may refer persons to the corporation, and are in a corporation that had, at the end of the corporation's most recent fiscal year, total gross assets exceeding one hundred million dollars ($100,000,000).

(4) A personal services arrangement between a physician or an immediate family member of the physician and the recipient of the referral if the arrangement meets all of the following requirements:

(A) It is set out in writing and is signed by the parties.

(B) It specifies all of the services to be provided by the physician or an immediate family member of the physician.

(C) The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

(D) A written notice disclosing the existence of the personal services arrangement and including information on where a person may go to file a complaint against the licensee or the immediate family member of the licensee, is provided to the following persons at the time any services pursuant to the arrangement are first provided:

(i) An injured worker who is referred by a licensee or an immediate family member of the licensee.

(ii) The injured worker's employer, if self-insured.

(iii) The injured worker's employer's insurer, if insured.

(iv) If the injured worker is known by the licensee or the recipient of the referral to be represented, the injured worker's attorney.

(E) The term of the arrangement is for at least one year.

(F) The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties, except that if the services provided pursuant to the arrangement include medical services provided under Division 4, compensation paid for the services shall be subject to the official medical fee schedule promulgated pursuant to Section 5307.1 or subject to any contract authorized by Section 5307.11.

(G) The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

(c) (1) A physician may refer a person to a health facility as defined in Section 1250 of the Health and Safety Code, to any facility owned or leased by a health facility, or to an outpatient surgical center, if the recipient of the referral does not compensate the physician for the patient referral, and any equipment lease arrangement between the physician and the referral recipient complies with the requirements of paragraph (2) of subdivision (b).

(2) Nothing shall preclude this subdivision from applying to a physician solely because the physician has an ownership or leasehold interest in an entire health facility or an entity that owns or leases an entire health facility.

(3) A physician may refer a person to a health facility for any service classified as an emergency under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code. For nonemergency outpatient diagnostic imaging services performed with equipment for which, when new, has

a commercial retail price of four hundred thousand dollars ($400,000) or more, the referring physician shall obtain a service preauthorization from the insurer, or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(d) A physician compensated or employed by a university may refer a person to any facility owned or operated by the university, or for a physician service, to another physician employed by the university, provided that the facility or university does not compensate the referring physician for the patient referral. For nonemergency diagnostic imaging services performed with equipment that, when new, has a commercial retail price of four hundred thousand dollars ($400,000) or more, the referring physician shall obtain a service preauthorization from the insurer or self-insured employer. An oral authorization shall be memorialized in writing within five business days. In the case of a facility which is totally or partially owned by an entity other than the university, but which is staffed by university physicians, those physicians may not refer patients to the facility if the facility compensates the referring physician for those referrals.

(e) The prohibition of Section 139.3 shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a physician's office, or the office of a group practice. Further, the provisions of Section 139.3 shall not alter, limit, or expand a physician's ability to deliver, or to direct or supervise the delivery of, in-office goods or services according to the laws, rules, and regulations governing his or her scope of practice. With respect to diagnostic imaging services performed with equipment that, when new, had a commercial retail price of four hundred thousand dollars ($400,000) or more, or for physical therapy services, or for psychometric testing that exceeds the routine screening battery protocols, with a time limit of two to five hours, established by the administrative director, the referring physician obtains a service preauthorization from the insurer or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(f) The prohibition of Section 139.3 shall not apply where the physician is in a group practice as defined in Section 139.3 and refers a person for services specified in Section 139.3 to a multispecialty clinic, as defined in subdivision (*l*) of Section 1206 of the Health and Safety Code. For diagnostic imaging services performed with equipment that, when new, had a commercial retail price of four hundred thousand dollars ($400,000) or more, or physical therapy services, or psychometric testing that exceeds the routine screening battery protocols, with a time limit of two to five hours, established by the administrative director, performed at the multispecialty facility, the referring physician shall obtain a service preauthorization from the

insurer or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(g) The requirement for preauthorization in Sections (c), (e), and (f) shall not apply to a patient for whom the physician or group accepts payment on a capitated risk basis.

(h) The prohibition of Section 139.3 shall not apply to any facility when used to provide health care services to an enrollee of a health care service plan 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).

(i) The prohibition of Section 139.3 shall not apply to an outpatient surgical center, as defined in paragraph (7) of subdivision (b) of Section 139.3, where the referring physician obtains a service preauthorization from the insurer or self-insured employer after disclosure of the financial relationship.

SEC. 13. Section 139.4 of the Labor Code is amended to read:

139.4. (a) The administrative director may review advertising copy to ensure compliance with Section 651 of the Business and Professions Code and may require qualified medical evaluators to maintain a file of all advertising copy for a period of 90 days from the date of its use. Any file so required to be maintained shall be available to the administrative director upon the administrative director's request for review.

(b) No advertising copy shall be used after its use has been disapproved by the administrative director and the qualified medical evaluator has been notified in writing of the disapproval.

(c) A qualified medical evaluator who is found by the administrative director to have violated any provision of this section may be terminated, suspended, or placed on probation.

(d) Proceedings to determine whether a violation of this section has occurred shall be conducted pursuant to Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The administrative director shall adopt regulations governing advertising by physicians with respect to industrial injuries or illnesses.

(f) Subdivision (a) shall not be construed to alter the application of Section 651 of the Business and Professions Code.

SEC. 14. Section 139.45 of the Labor Code is amended to read:

139.45. (a) In promulgating regulations pursuant to Sections 139.4 and 139.43, the administrative director shall take particular care to preclude any advertisements with respect to industrial injuries or illnesses that are false or mislead the public with respect to workers' compensation. In promulgating rules with respect to advertising, the State Bar and physician licensing boards shall also take particular care to achieve the same goal.

(b) For purposes of subdivision (a), false or misleading advertisements shall include advertisements that do any of the following:

(1) Contain an untrue statement.

(2) Contain any matter, or present or arrange any matter in a manner or format that is false, deceptive, or that tends to confuse, deceive, or mislead.

(3) Omit any fact necessary to make the statement made, in the light of the circumstances under which the statement is made, not misleading.

(4) Are transmitted in any manner that involves coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

(5) Entice a person to respond by the offering of any consideration, including a good or service but excluding free medical evaluations or treatment, that would be provided either at no charge or for less than market value. No free medical evaluation or treatment shall be offered for the purpose of defrauding any entity.

SEC. 14.3. Section 3201.7 of the Labor Code, as added by Chapter 6 of the Statutes of 2002, is repealed.

SEC. 14.5. Section 3201.7 of the Labor Code, as added by Chapter 866 of the Statutes of 2002, is repealed.

SEC. 14.7. Section 3201.7 is added to the Labor Code, to read:

3201.7. (a) Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any labor-management agreement that meets all of the following requirements:

(1) The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.

(2) The labor-management agreement is restricted to the establishment of the terms and conditions necessary to implement this section.

(3) The labor-management agreement has been negotiated in accordance with the authorization of the administrative director pursuant to subdivision (d), between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(A) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law

judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(B) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(C) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(D) Joint labor management safety committees.

(E) A light-duty, modified job, or return-to-work program.

(F) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this subdivision shall be declared null and void.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000) or more, and employing at least 50 employees, or any employer that paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000), and employing at least 50 employees in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers'

compensation insurance premiums of five hundred thousand dollars ($500,000) or more.

(3) Employers or groups of employers, including cities and counties, that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(d) Any recognized or certified exclusive bargaining representative in an industry not covered by Section 3201.5, may file a petition with the administrative director seeking permission to negotiate with an employer or group of employers to enter into a labor-management agreement pursuant to this section. The petition shall specify the bargaining unit or units to be included, the names of the employers or groups of employers, and shall be accompanied by proof of the labor union's status as the exclusive bargaining representative. The current collective bargaining agreement or agreements shall be attached to the petition. The petition shall be in the form designated by the administrative director. Upon receipt of the petition, the administrative director shall promptly verify the petitioner's status as the exclusive bargaining representative. If the petition satisfies the requirements set forth in this subdivision, the administrative director shall issue a letter advising each employer and labor representative of their eligibility to enter into negotiations, for a period not to exceed one year, for the purpose of reaching agreement on a labor-management agreement pursuant to this section. The parties may jointly request, and shall be granted, by the administrative director, an additional one-year period to negotiate an agreement.

(e) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the labor-management agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the labor-management agreement.

(3) The name, address, and telephone number of the contact person of the employer.

(4) Any other information that the administrative director deems necessary to further the purposes of this section.

(f) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, where such filing is required by law, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(g) Commencing July 1, 2005, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of labor-management agreements received and the number of employees covered by these agreements.

(h) By June 30, 2006, and annually thereafter, the administrative director shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

(10) Overall worker satisfaction.

The division shall have the authority to require employers and groups of employers participating in labor-management agreements pursuant to this section to provide the data listed above.

(i) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (f) and (g) based on the labor-management agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into labor-management agreements authorized by this section.

SEC. 15. Section 3823 is added to the Labor Code, to read:

3823. (a) The administrative director shall, in coordination with the Bureau of Fraudulent Claims of the Department of Insurance, the Medi-Cal Fraud Task Force, and the Bureau of Medi-Cal Fraud and Elder Abuse of the Department of Justice, adopt protocols, to the extent that these protocols are applicable to achieve the purpose of subdivision (b), similar to those adopted by the Department of Insurance concerning medical billing and provider fraud.

(b) Any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that believes that a fraudulent claim has been made by any person or entity providing medical care, as described in Section 4600, shall report the apparent fraudulent claim in the manner prescribed by subdivision (a).

SEC. 16. Section 4061 of the Labor Code is amended to read:

4061. (a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice either that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury or notice of the amount of permanent disability indemnity determined by the employer to be payable. The notice shall include information concerning how the employee may obtain a formal medical evaluation pursuant to subdivision (c) if he or she disagrees with the position taken by the employer. The notice shall be accompanied by the form prescribed by the administrative director for requesting assignment of a panel of qualified medical evaluators, unless the employee is represented by an attorney. If the employer determines permanent disability indemnity is payable, the employer shall advise the employee of the amount determined payable and the basis on which the determination was made and whether there is need for continuing medical care.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine the need for continuing medical care, or at which time the employer will advise the employee of the amount of permanent disability indemnity the employer has determined to be payable. If an employee is provided notice pursuant to this paragraph and the employer later takes the position that the employee

has no permanent impairment or limitations resulting from the injury, or later determines permanent disability indemnity is payable, the employer shall in either event, within 14 days of the determination to take either position, provide the employee with the notice specified in paragraph (1).

(b) Each notice required by subdivision (a) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an information and assistance officer or an attorney. It shall contain the following language:

''Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits.''

(c) If the parties do not agree to a permanent disability rating based on the treating physician's evaluation or the assessment of need for continuing medical care, and the employee is represented by an attorney, the employer shall seek agreement with the employee on a physician to prepare a comprehensive medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed to by the parties, the parties may not later select an agreed medical evaluator. Evaluations of an employee's permanent impairment and limitations obtained prior to the period to reach agreement shall not be admissible in any proceeding before the appeals board. After the period to reach agreement has expired, either party may select a qualified medical evaluator to conduct the comprehensive medical evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense.

(d) If the parties do not agree to a permanent disability rating based on the treating physician's evaluation, and if the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare an additional medical evaluation. The employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury.

For injuries occurring on or after January 1, 2003, except as provided in subdivision (b) of Section 4064, the report of the qualified medical

evaluator and the reports of the treating physician or physicians shall be the only admissible reports and shall be the only reports obtained by the employee or the employer on the issues subject to this section.

(e) If an employee obtains a qualified medical evaluator from a panel pursuant to subdivision (d) or pursuant to subdivision (b) of Section 4062, and thereafter becomes represented by an attorney and obtains an additional qualified medical evaluator, the employer shall have a corresponding right to secure an additional qualified medical evaluator.

(f) The represented employee shall be responsible for making an appointment with an agreed medical evaluator.

(g) The unrepresented employee shall be responsible for making an appointment with a qualified medical evaluator selected from a panel of three qualified medical evaluators. The evaluator shall give the employee, at the appointment, a brief opportunity to ask questions concerning the evaluation process and the evaluator's background. The unrepresented employee shall then participate in the evaluation as requested by the evaluator unless the employee has good cause to discontinue the evaluation. For purposes of this subdivision, ''good cause'' shall include evidence that the evaluator is biased against the employee because of his or her race, sex, national origin, religion, or sexual preference or evidence that the evaluator has requested the employee to submit to an unnecessary medical examination or procedure. If the unrepresented employee declines to proceed with the evaluation, he or she shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a comprehensive medical evaluation. If the appeals board subsequently determines that the employee did not have good cause to not proceed with the evaluation, the cost of the evaluation shall be deducted from any award the employee obtains.

(h) Upon selection or assignment pursuant to subdivision (c) or (d), the medical evaluator shall perform a comprehensive medical evaluation according to the procedures promulgated by the administrative director under paragraphs (2) and (3) of subdivision (j) of Section 139.2 and summarize the medical findings on a form prescribed by the administrative director. The comprehensive medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator. If, after a comprehensive medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.

(i) Except as provided in Section 139.3, the medical evaluator may obtain consultations from other physicians who have treated the

employee for the injury whose expertise is necessary to provide a complete and accurate evaluation.

(j) The qualified medical evaluator who has evaluated an unrepresented employee shall serve the comprehensive medical evaluation and the summary form on the employee, employer, and the administrative director. The unrepresented employee or the employer may submit the treating physician's evaluation for the calculation of a permanent disability rating. Within 20 days of receipt of the comprehensive medical evaluation, the administrative director shall calculate the permanent disability rating according to Section 4660 and serve the rating on the employee and employer.

(k) Any comprehensive medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 or 4750 shall first be submitted by the administrative director to a workers' compensation judge who may refer the report back to the qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(*l*) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the administrative director reconsider the recommended rating or obtain additional information from the treating physician or medical evaluator to address issues not addressed or not completely addressed in the original comprehensive medical evaluation or not prepared in accord with the procedures promulgated under paragraph (2) or (3) of subdivision (j) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the comprehensive medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the treating physician or qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the treating physician's or qualified medical evaluator's final comprehensive medical evaluation and summary form, the administrative director shall recalculate the permanent disability rating according to Section 4660 and serve the rating, the comprehensive medical evaluation, and the summary form on the employee and employer.

(m) If a comprehensive medical evaluation from the treating physician or an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation or promptly commence

proceedings before the appeals board to resolve the dispute. If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The administrative director shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(n) No issue relating to the existence or extent of permanent impairment and limitations or the need for continuing medical care resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician or an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations or need for continuing medical care resulting from the injury shall be obtained prior to service of the comprehensive medical evaluation on the employee and employer if the employee is unrepresented, or prior to the attempt to select an agreed medical evaluator if the employee is represented. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury and comprehensive medical evaluations prepared by a qualified medical evaluator selected by an unrepresented employee from a three-member panel shall be admissible.

SEC. 16.5. Section 4062 of the Labor Code is repealed.

SEC. 17. Section 4062 is added to the Labor Code, to read:

4062. (a) If either the employee or employer objects to a medical determination made by the treating physician concerning the permanent and stationary status of the employee's medical condition, the employee's preclusion or likely preclusion to engage in his or her usual occupation, the extent and scope of medical treatment, the existence of new and further disability, or any other medical issues not covered by Section 4060 or 4061, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. Employer objections to the treating physician's recommendation for spinal surgery

shall be subject to subdivision (b), and after denial of the physician's recommendation, in accordance with Section 4610. These time limits may be extended for good cause or by mutual agreement. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before the appeals board. After the period to reach agreement has expired, the objecting party may select a qualified medical evaluator to conduct the comprehensive medical evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense. The nonobjecting party may continue to rely on the treating physician's report or may select a qualified medical evaluator to conduct an additional evaluation.

(b) The employer may object to a report of the treating physician recommending that spinal surgery be performed within 10 days of the receipt of the report. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a California licensed board-certified or board-eligible orthopedic surgeon or neurosurgeon to prepare a second opinion report resolving the disputed surgical recommendation. If no agreement is reached within 10 days, or if the employee is not represented by an attorney, an orthopedic surgeon or neurosurgeon shall be randomly selected by the administrative director to prepare a second opinion report resolving the disputed surgical recommendation. Examinations shall be scheduled on an expedited basis. The second opinion report shall be served on the parties within 45 days of receipt of the treating physician's report. If the second opinion report recommends surgery, the employer shall authorize the surgery. If the second opinion report does not recommend surgery, the employer shall file a declaration of readiness to proceed. The employer shall not be liable for medical treatment costs for the disputed surgical procedure, whether through a lien filed with the appeals board or as a self-procured medical expense, or for periods of temporary disability resulting from the surgery, if the disputed surgical procedure is performed prior to the completion of the second opinion process required by this subdivision.

(c) The second opinion physician shall not have any material professional, familial, or financial affiliation, as determined by the administrative director, with any of the following:

(1) The employer, his or her workers' compensation insurer, third-party claims administrator, or other entity contracted to provide utilization review services pursuant to Section 4610.

(2) Any officer, director, or employee of the employer's health care provider, workers' compensation insurer, or third-party claims administrator.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the employer's health care provider, workers' compensation insurer, or third-party claims administrator, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the employee or his or her treating physician whose treatment is under review, or the alternative therapy, if any, recommended by the employer or other entity.

(6) The employee or the employee's immediate family.

(d) If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the comprehensive medical evaluation. Except in cases where the treating physician's recommendation that spinal surgery be performed pursuant to subdivision (b), the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a comprehensive medical evaluation. For injuries occurring on or after January 1, 2003, except as provided in subdivision (b) of Section 4064, the evaluation of the qualified medical evaluator selected from a panel of three and the reports of the treating physician or physicians shall be the only admissible reports and shall be the only reports obtained by the employee or employer on issues subject to this section in a case involving an unrepresented employee.

(e) Upon completing a determination of the disputed medical issue, the physician selected under subdivision (a) or (d) to perform the medical evaluation shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator. If, after a medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.

(f) No disputed medical issue specified in subdivision (a) may be the subject of a declaration of readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator.

(g) With the exception of a report or reports prepared by the treating physician or physicians, no report determining disputed medical issues set forth in subdivision (a) shall be obtained prior to the expiration of the period to reach agreement on the selection of an agreed medical evaluator under subdivision (a). Reports obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury shall be admissible.

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 18. Section 4062.01 is added to the Labor Code, to read:

4062.01. (a) If either the employee or employer objects to a medical determination made by the treating physician concerning the permanent and stationary status of the employee's medical condition, the employee's preclusion or likely preclusion to engage in his or her usual occupation, the extent and scope of medical treatment, the existence of new and further disability, or any other medical issues not covered by Section 4060 or 4061, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. These time limits may be extended for good cause or by mutual agreement. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before the appeals board. After the period to reach agreement has expired, the objecting party may select a qualified medical evaluator to conduct the comprehensive medical evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense. The nonobjecting party may continue to rely on the treating physician's report or may select a qualified medical evaluator to conduct an additional evaluation.

(b) If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the comprehensive medical evaluation. The employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a comprehensive medical evaluation. The evaluation of the qualified medical evaluator selected from a panel of three and the reports of the treating physician or physicians shall be the only admissible reports and shall be the only reports obtained by the employee or employer on issues subject to this section in a case involving an unrepresented employee.

(c) Upon completing a determination of the disputed medical issue, the physician selected under subdivision (a) or (b) to perform the medical evaluation shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator. If, after a medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.

(d) No disputed medical issue specified in subdivision (a) may be the subject of a declaration of readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator.

(e) With the exception of a report or reports prepared by the treating physician or physicians, no report determining disputed medical issues set forth in subdivision (a) shall be obtained prior to the expiration of the period to reach agreement on the selection of an agreed medical evaluator under subdivision (a). Reports obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury shall be admissible.

(f) This section shall become operative on January 1, 2007.

SEC. 19. Section 4062.5 of the Labor Code is amended to read:

4062.5. If a qualified medical evaluator selected by an unrepresented employee from a three-member panel fails to complete the formal medical evaluation within the timeframes established by the administrative director pursuant to paragraph (1) of subdivision (j) of Section 139.2, the employee shall have the right to a new panel of three

qualified medical evaluators from which to select one to prepare a formal medical evaluation. Neither the employee nor the employer shall have any liability for payment for the formal medical evaluation which was not completed within the required timeframes unless the employee, on a form prescribed by the administrative director, waives his or her right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required timeframes.

SEC. 20. Section 4062.9 of the Labor Code is amended to read:

4062.9. (a) In cases where an additional comprehensive medical evaluation is obtained under Section 4061 or 4062, if the employee has been treated by his or her personal physician, or by his or her personal chiropractor, as defined in Section 4601, who was predesignated prior to the date of injury as provided under Section 4600, the findings of the personal physician or personal chiropractor are presumed to be correct. This presumption is rebuttable and may be controverted by a preponderance of medical opinion indicating a different level of disability. However, the presumption shall not apply where both parties select qualified medical examiners.

(b) In all cases other than those specified in subdivision (a), regardless of the date of injury, no presumption shall apply to the opinion of any physician on the issue of extent and scope of medical treatment, either prior or subsequent to the issuance of an award.

(c) The administrative director shall develop, not later than January 1, 2004, and periodically revise as necessary thereafter, educational materials to be used to provide treating physicians and chiropractors with information and training in basic concepts of workers' compensation, the role of the treating physician, the conduct of permanent and stationary evaluations, and report writing.

(d) The amendment made to this section by SB 228 of the 2003–04 Regular Session shall not constitute good cause to reopen or rescind, alter, or amend any order, decision, or award of the appeals board.

SEC. 22. Section 4068 of the Labor Code is amended to read:

4068. (a) Upon determining that a treating physician's report contains opinions that are the result of conjecture, are not supported by adequate evidence, or that indicate bias, the appeals board shall so notify the administrative director in writing in a manner he or she has specified.

(b) If the administrative director believes that any treating physician's reports show a pattern of unsupported opinions, he or she shall notify in writing the physician's applicable licensing body of his or her findings.

SEC. 23. Section 4600.1 of the Labor Code is repealed.

SEC. 24. Section 4600.1 is added to the Labor Code, to read:

4600.1. (a) Subject to subdivision (b), any person or entity that dispenses medicines and medical supplies, as required by Section 4600, shall dispense the generic drug equivalent.

(b) A person or entity shall not be required to dispense a generic drug equivalent under either of the following circumstances:

(1) When a generic drug equivalent is unavailable.

(2) When the prescribing physician specifically provides in writing that a nongeneric drug must be dispensed.

(c) For purposes of this section, ''dispense'' has the same meaning as the definition contained in Section 4024 of the Business and Professions Code.

(d) Nothing in this section shall be construed to preclude a prescribing physician, who is also the dispensing physician, from dispensing a generic drug equivalent.

SEC. 25. Section 4603.2 of the Labor Code is amended to read:

4603.2. (a) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.

(b) (1) Except as provided in subdivision (d) of Section 4603.4, payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made by the employer within 45 working days after receipt of each separate, itemized billing, together with any required reports and any written authorization for services that may have been received by the physician. If the billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the billing by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision. Any properly documented amount not paid within the 45-working-day period shall be increased by 15 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill, unless the employer does both of the following:

(A) Pays the uncontested amount within the 45-working-day period.

(B) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of a bill which includes charges from a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the bill shall satisfy the requirements of this paragraph.

If an employer contests all or part of a billing, any amount determined payable by the appeals board shall carry interest from the date the

amount was due until it is paid. If any contested amount is determined payable by the appeals board, the defendant shall be ordered to reimburse the provider for any filing fees paid pursuant to Section 4903.05.

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(2) Notwithstanding paragraph (1), if the employer is a governmental entity, payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made within 60 working days after receipt of each separate, itemized billing, together with any required reports and any written authorization for services that may have been received by the physician.

(c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

(d) (1) Whenever an employer or insurer employs an individual or contracts with an entity to conduct a review of a billing submitted by a physician or medical provider, the employer or insurer shall make available to that individual or entity all documentation submitted together with that billing by the physician or medical provider. When an individual or entity conducting a bill review determines that additional information or documentation is necessary to review the billing, the individual or entity shall contact the claims administrator or insurer to obtain the necessary information or documentation that was submitted by the physician or medical provider pursuant to subdivision (b).

(2) An individual or entity reviewing a bill submitted by a physician or medical provider shall not alter the procedure codes billed or recommend reduction of the amount of the bill unless the documentation submitted by the physician or medical provider with the bill has been reviewed by that individual or entity. If the reviewer does not recommend payment as billed by the physician or medical provider, the explanation of review shall provide the physician or medical provider with a specific explanation as to why the reviewer altered the procedure code or amount billed and the specific deficiency in the billing or documentation that caused the reviewer to conclude that the altered procedure code or amount recommended for payment more accurately represents the service performed.

(3) The appeals board shall have jurisdiction over disputes arising out of this subdivision pursuant to Section 5304.

SEC. 26. Section 4603.4 of the Labor Code is amended to read:

4603.4. (a) The administrative director shall adopt rules and regulations to do all of the following:

(1) Ensure that all health care providers and facilities submit medical bills for payment on standardized forms.

(2) Require acceptance by employers of electronic claims for payment of medical services.

(3) Ensure confidentiality of medical information submitted on electronic claims for payment of medical services.

(b) To the extent feasible, standards adopted pursuant to subdivision (a) shall be consistent with existing standards under the federal Health Insurance Portability and Accountability Act of 1996.

(c) The rules and regulations requiring employers to accept electronic claims for payment of medical services shall be adopted on or before January 1, 2005, and shall require all employers to accept electronic claims for payment of medical services on or before July 1, 2006.

(d) Payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made by the employer within 15 working days after electronic receipt of an itemized electronic billing for services at or below the maximum fees provided in the official medical fee schedule adopted pursuant to Section 5307.1. If the billing is contested, denied, or incomplete, payment shall be made in accordance with Section 4603.2.

SEC. 27. Section 4604.5 is added to the Labor Code, to read:

4604.5. (a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices as generally accepted by the health care community, and shall apply the current standards of care, including, but not limited to, appropriate and inappropriate diagnostic techniques, treatment modalities, adjustive modalities, length of treatment, and appropriate specialty referrals. These guidelines shall be educational and designed to assist providers by offering an analytical framework for the evaluation and treatment of the more common problems of injured workers, and shall assure appropriate and

necessary care for all injured workers diagnosed with industrial conditions.

(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines, and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medical Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury.

(d) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and Environmental Medical Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic and 24 physical therapy visits per industrial injury.

(e) The presumption afforded to the treating physician in Section 4062.9 shall not be applicable to cases arising under this section.

(f) This section shall not apply when an insurance carrier authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

(g) For all injuries not covered by the American College of Occupational and Environmental Medicine Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence based medical treatment guidelines generally recognized by the medical community.

SEC. 28. Section 4610 is added to the Labor Code, to read:

4610. (a) For purposes of this section, ''utilization review'' means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) Every employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical

treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

(d) If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, delay, or deny requests for authorization, the employer shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or Section 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, delays, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(e) No person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

(f) The criteria or guidelines used in the utilization review process to determine whether to approve, modify, delay, or deny medical treatment services shall be all of the following:

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines.

(3) Evaluated at least annually, and updated if necessary.

(4) Disclosed to the physician and the employee, if used as the basis of a decision to modify, delay, or deny services in a specified case under review.

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public

reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available through electronic means. No charge shall be required for an employee whose physician's request for medical treatment services is under review.

(g) In determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements must be met:

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(3) (A) Decisions to approve, modify, delay, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision. Decisions resulting in modification, delay, or denial of all or part of the requested health care service shall be communicated to physicians initially by telephone or facsimile, and to the physician and employee in writing within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is not approved in full, disputes shall be resolved in accordance with Section 4062. If a request to perform spinal surgery is denied, disputes shall be resolved in accordance with subdivision (b) of Section 4062.

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

(4) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify, delay, or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity.

(5) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1) or (2) because the employer or other entity is not in receipt of all of the information reasonably necessary and requested, because the employer requires consultation by an expert reviewer, or because the employer has asked that an additional examination or test be performed upon the employee that is reasonable and consistent with good medical practice, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information requested but not received, the expert reviewer to be consulted, or the additional examinations or tests required. The employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer,

the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

(h) Every employer, insurer, or other entity subject to this section shall maintain telephone access for physicians to request authorization for health care services.

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

SEC. 29. Section 4628 of the Labor Code is amended to read:

4628. (a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.

(2) Reviewing and summarizing prior medical records.

(3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil penalties collected under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (*l*) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

(i) Any person billing for medical-legal evaluations, diagnostic procedures, or diagnostic services performed by persons other than those employed by the reporting physician or physicians, or a medical corporation owned by the reporting physician or physicians shall specify the amount paid or to be paid to those persons for the evaluations, procedures, or services. This subdivision shall not apply to any procedure or service defined or valued pursuant to Section 5307.1.

(j) The report shall contain a declaration by the physician signing the report, under penalty of perjury, stating:

''I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.''

The foregoing declaration shall be dated and signed by the reporting physician and shall indicate the county wherein it was signed.

(k) The physician shall provide a curriculum vitae upon request by a party and include a statement concerning the percent of the physician's total practice time that is annually devoted to medical treatment.

SEC. 33. Section 4903.05 is added to the Labor Code, to read:

4903.05. (a) A filing fee of one hundred dollars ($100) shall be charged for each initial lien filed by providers pursuant to subdivision (b) of Section 4903.

(b) No filing fee shall be required for liens filed by the Veterans Administration, the Medi-Cal program, or public hospitals.

(c) The filing fee shall be collected by the court administrator. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund. Any fees collected from providers that have not been redistributed to providers pursuant to paragraph (2) of subdivision (b) of Section 4603.2, shall be used to offset the amount of fees assessed on employers under Section 62.5.

(d) The court administrator shall adopt reasonable rules and regulations governing the procedures for the collection of the filing fee.

SEC. 34. Section 5307.1 of the Labor Code is repealed.

SEC. 35. Section 5307.1 is added to the Labor Code, to read:

5307.1. (a) The administrative director, after public hearings, shall adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services other than physician services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600 and provided pursuant to this section. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600. Commencing January 1, 2004, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the fee-related structure and rules of the relevant Medicare payment systems, except for the components listed in subdivisions (k) and (*l*), maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (e), except that for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100 percent of fees prescribed in the relevant Medi-Cal payment system. Upon adoption by the administrative director of an official medical fee schedule pursuant to this section, the maximum reasonable fees paid shall not exceed 120 percent of estimated aggregate fees prescribed in the Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (e). Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by

the practitioner pursuant to subdivision (b) of Section 4024 of the Business and Professions Code.

(b) In order to comply with the standards specified in subdivision (f), the administrative director may adopt different conversion factors, diagnostic related group weights, and other factors affecting payment amounts from those used in the Medicare payment system, provided estimated aggregate fees do not exceed 120 percent of the estimated aggregate fees paid for the same class of services in the relevant Medicare payment system.

(c) Notwithstanding subdivisions (a) and (d), the maximum facility fee for services performed in an ambulatory surgical center, or in a hospital outpatient department, may not exceed 120 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department.

(d) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system, the administrative director shall establish maximum fees for that item, provided that the maximum fee paid shall not exceed 120 percent of the fees paid by Medicare for services that require comparable resources. If the administrative director determines that a pharmacy service or drug is not covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item, provided, however, that the maximum fee paid shall not exceed 100 percent of the fees paid by Medi-Cal for pharmacy services or drugs that require comparable resources.

(e) Prior to the adoption by the administrative director of a medical fee schedule pursuant to this section, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, or, with regard to pharmacy services and drugs, for a pharmacy service or drug that is not covered by a Medi-Cal payment system, the maximum reasonable fee paid shall not exceed the fee specified in the official medical fee schedule in effect on December 31, 2003.

(f) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(g) (1) (A) Notwithstanding any other provision of law, the official medical fee schedule shall be adjusted to conform to any relevant changes in the Medicare and Medi-Cal payment systems no later than 60 days after the effective date of those changes, provided that both of the following conditions are met:

(i) The annual inflation adjustment for facility fees for inpatient hospital services provided by acute care hospitals and for hospital outpatient services shall be determined solely by the estimated increase

in the hospital market basket for the 12 months beginning October 1 of the preceding calendar year.

(ii) The annual update in the operating standardized amount and capital standard rate for inpatient hospital services provided by hospitals excluded from the Medicare prospective payment system for acute care hospitals and the conversion factor for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for excluded hospitals for the 12 months beginning October 1 of the preceding calendar year.

(B) The update factors contained in clauses (i) and (ii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2003.

(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) ''Medicare Economic Index'' means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of a providing physician and other services paid under the resource-based relative value scale.

(B) ''Hospital market basket'' means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(C) ''Hospital market basket for excluded hospitals'' means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall be reduced by 5 percent. The administrative director may reduce fees of individual procedures by different amounts, but in no event shall the administrative director reduce the fee for a procedure that is currently reimbursed at a rate at or below the Medicare rate for the same procedure.

(*l*) Notwithstanding subdivision (a), the administrative director, commencing January 1, 2006, shall have the authority, after public hearings, to adopt and revise, no less frequently than biennially, an official medical fee schedule for physician services. If the administrative director fails to adopt an official medical fee schedule for physician services by January 1, 2006, the existing official medical fee schedule rates for physician services shall remain in effect until a new schedule is adopted or the existing schedule is revised.

SEC. 36. Section 5307.2 of the Labor Code is repealed.

SEC. 37. Section 5307.2 is added to the Labor Code, to read:

5307.2. The administrative director shall contract with an independent consulting firm, to the extent permitted by state law, to perform an annual study of access to medical treatment for injured workers. The study shall analyze whether there is adequate access to quality health care and products for injured workers and make recommendations to ensure continued access. If the administrative director determines, based on this study, that there is insufficient access to quality health care or products for injured workers, the administrative director may make appropriate adjustments to medical and facilities' fees. When there has been a determination that substantial access problems exist, the administrative director may, in accordance with the notification and hearing requirements of Section 5307.1, adopt fees in excess of 120 percent of the applicable Medicare payment system fee for the applicable services or products.

SEC. 38. Section 5307.21 of the Labor Code, as added by Section 74 of Chapter 6 of the Statutes of 2002, is repealed.

SEC. 39. Section 5307.21 of the Labor Code, as added by Section 13 of Chapter 866 of the Statutes of 2002, is repealed.

SEC. 41. Section 5307.27 is added to the Labor Code, to read:

5307.27. On or before December 1, 2004, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a medical

treatment utilization schedule, that shall incorporate the evidence-based, peer-reviewed, nationally recognized standards of care recommended by the commission pursuant to Section 77.5, and that shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.

SEC. 42. Section 5307.3 of the Labor Code is amended to read:

5307.3. The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board or the court administrator.

No rule or regulation of the administrative director pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the administrative director seeking a change in its rules or regulations shall be deemed to be denied if not set by the administrative director for public hearing to be held within six months of the date on which the request is received by the administrative director.

SEC. 43. Section 5318 of the Labor Code is repealed.

SEC. 44. Section 5318 is added to the Labor Code, to read:

5318. (a) Implantable medical devices, hardware, and instrumentation for Diagnostic Related Groups (DRGs) 004, 496, 497, 498, 519, and 520 shall be separately reimbursed at the provider's documented paid cost, plus an additional 10 percent of the provider's documented paid cost, not to exceed a maximum of two hundred fifty dollars ($250), plus any sales tax and shipping and handling charges actually paid.

(b) This section shall be operative only until the administrative director adopts a regulation specifying separate reimbursement, if any, for implantable medical hardware or instrumentation for complex spinal surgeries.

SEC. 45. Section 5703 of the Labor Code is amended to read:

5703. The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

(a) Reports of attending or examining physicians.

(1) Statements concerning any bill for services are admissible only if made under penalty of perjury that they are true and correct to the best knowledge of the physician.

(2) In addition, reports are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report

are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury.

(b) Reports of special investigators appointed by the appeals board or a workers' compensation judge to investigate and report upon any scientific or medical question.

(c) Reports of employers, containing copies of timesheets, book accounts, reports, and other records properly authenticated.

(d) Properly authenticated copies of hospital records of the case of the injured employee.

(e) All publications of the Division of Workers' Compensation.

(f) All official publications of the State of California and United States governments.

(g) Excerpts from expert testimony received by the appeals board upon similar issues of scientific fact in other cases and the prior decisions of the appeals board upon similar issues.

(h) Relevant portions of medical treatment protocols published by medical specialty societies. To be admissible, the party offering such a protocol or portion of a protocol shall concurrently enter into evidence information regarding how the protocol was developed, and to what extent the protocol is evidence-based, peer-reviewed, and nationally recognized, as required by regulations adopted by the appeals board. If a party offers into evidence a portion of a treatment protocol, any other party may offer into evidence additional portions of the protocol. The party offering a protocol, or portion thereof, into evidence shall either make a printed copy of the full protocol available for review and copying, or shall provide an Internet address at which the entire protocol may be accessed without charge.

SEC. 47. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with

fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the ''designated list of high hazard industries'' shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No

employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California, that may include the industries that, pursuant to Section 14316 of Title 8 of the California Code of Regulations, are not currently required to keep records of occupational injuries and illnesses under Article 2 (commencing with Section 14301) of Subchapter 1 of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as

defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, including the logs of occupational injuries and illnesses maintained by employers on Form CAL/OSHA No. 200, or its equivalent, as required by Section 14301 of Title 8 of the California Code of Regulations, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(*l*) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds within four months of the commencement of the initial insurance policy term. The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be an independent licensed California professional engineer, certified safety professional, or a certified industrial hygienist.

SEC. 48. The Commission on Health and Safety and Workers' Compensation shall conduct a study of the spinal surgery second opinion procedure established in subdivision (b) of Section 4062 of the Labor Code. The study shall be completed by June 30, 2006. The commission shall issue a report concerning the findings of the study and recommendations for further legislation.

SEC. 49. Section 9792.6 of Title 8 of the California Code of Regulations is repealed effective January 1, 2004.

SEC. 50. Article 7 (commencing with Section 70) of Chapter 1 of Division 1 of the California Code of Regulations is repealed effective January 1, 2004.

SEC. 51. On January 1, 2004, all assets and liabilities of the Industrial Medical Council, the Industrial Medicine Fund, and any unencumbered funds available pursuant to Schedule (4) of Item 7350-001-0001 and Items 7350-015-0223 and 7350-001-0079 of the Budget Act of 2003 shall be transferred to the Workers' Compensation Administration Revolving Fund established in Section 62.5 of the Labor Code.

SEC. 52. The regulations adopted by the Industrial Medical Council contained in Chapter 1 (commencing with Section 1) of Division 1 of Title 8 of the California Code of Regulations, except for those regulations repealed in Section 50 of this act, shall remain in effect and shall be deemed to be regulations adopted by the Administrative Director of the Division of Workers' Compensation. The terms of all qualified medical examiners appointed by the Industrial Medical Council shall be unaffected by the changes made by this act. All qualified medical examiners appointed by the Industrial Medical Council shall be deemed to be appointments made by the Administrative Director of the Division of Workers' Compensation. Any pending disciplinary actions against qualified medical examiners shall not be affected by the changes made by this act.

SEC. 52.5. (a) The Legislature finds and declares all of the following:

(1) The State Compensation Insurance Fund is the workers' compensation insurer of last resort insuring most of the small employers in the state, and employers that cannot find insurance elsewhere.

(2) Today, the State Compensation Insurance Fund covers over 50 percent of the market and its financial health is essential to the economic well-being of the state.

(3) Employers in this state need reasonably priced workers' compensation insurance.

(b) It is the intent of the Legislature that the Insurance Commissioner review and analyze the financial condition, underwriting practices, and rate structure of the State Compensation Insurance Fund and report to the Legislature and the Governor on the potential of reducing rates by July 1, 2004, and every July 1 thereafter.

SEC. 53. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 54. This act shall become operative only if Assembly Bill 227 of the 2003–04 Regular Session is enacted and becomes operative.

SEC. 55. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 640

An act to amend Sections 2701, 2702, 2703, 2708, 2725, 2815, 2815.1, 2841, 2847, 2878, 2893, 2895, 4501, 4503, and 4521 of, and to add Sections 2725.5, 2878.1, 2895.5, and 4521.2 to, the Business and Professions Code, and to add Article 4 (commencing with Section 128475) to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, relating to healing arts.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 2701 of the Business and Professions Code is amended to read:

2701. There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.

Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 2702 of the Business and Professions Code is amended to read:

2702. Each member of the board shall be a citizen of the United States and a resident of the State of California. Four members shall represent the public at large, and shall not be licensed under any board

under this division or any board referred to in Section 1000 or 3600 and shall have no pecuniary interests in the provision of health care services. Two members shall be licensed registered nurses under the provisions of this chapter, each of whom shall be active in the practice of his or her profession engaged primarily in direct patient care with at least five continuous years of experience, and who shall not be engaged as an educator or administrator of a nursing education program under the provisions of this chapter. One member shall be a licensed registered nurse who shall be active as an advanced practice registered nurse as defined in Section 2725.5. One member shall be a licensed registered nurse under the provisions of this chapter who shall be active as an educator or administrator in an approved program to train registered nurses. One member shall be a licensed registered nurse who is an administrator of a nursing service with at least five continuous years of experience.

SEC. 3. Section 2703 of the Business and Professions Code is amended to read:

2703. All appointments shall be for a term of four years and vacancies shall be filled for the unexpired term. No person shall serve more than two consecutive terms.

The Governor shall appoint two of the public members and the licensed members of the board qualified as provided in Section 2702. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 4. Section 2708 of the Business and Professions Code is amended to read:

2708. The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.

The executive officer shall be a nurse currently licensed under this chapter and shall possess other qualifications as determined by the board.

The executive officer shall not be a member of the board.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2725 of the Business and Professions Code is amended to read:

2725. (a) In amending this section at the 1973–74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973–74 session to provide clear legal authority for functions and

procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

(b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) ''Standardized procedures,'' as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility

licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

(d) Nothing in this section shall be construed to require approval of standardized procedures by the Division of Licensing of the Medical Board of California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the provisions of this chapter, or develop standardized procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required under state or federal statute. ''State agency'' includes every state office, officer, department, division, bureau, board, authority, and commission.

SEC. 6. Section 2725.5 is added to the Business and Professions Code, to read:

2725.5. ''Advanced practice registered nurse'' means those licensed registered nurses who have met the requirements of Article 2.5 (commencing with Section 2746), Article 7 (commencing with Section 2825), Article 8 (commencing with Section 2834), or Article 9 (commencing with Section 2838).

SEC. 7. Section 2815 of the Business and Professions Code is amended to read:

2815. Subject to the provisions of Section 128.5, the amount of the fees prescribed by this chapter in connection with the issuance of licenses for registered nurses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application for a licensure by examination shall be fixed by the board at not less than seventy-five dollars ($75) nor more than one hundred fifty dollars ($150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase an examination from a vendor approved by the board.

(c) The fee to be paid for application for licensure by endorsement shall be fixed by the board at not less than fifty dollars ($50) nor more than one hundred dollars ($100).

(d) The biennial fee to be paid upon the filing of an application for renewal of the license shall be not less than seventy-five dollars ($75) nor more than one hundred fifty dollars ($150). In addition, an assessment of ten dollars ($10) shall be collected and credited to the Registered Nurse Education Fund, pursuant to Section 2815.1.

(e) The penalty fee for failure to renew a license within the prescribed time shall be fixed by the board at not more than 50 percent of the regular

renewal fee, but not less than thirty-seven dollars ($37) nor more than seventy-five dollars ($75).

(f) The fee to be paid for approval of a continuing education provider shall be fixed by the board at not less than two hundred dollars ($200) nor more than three hundred dollars ($300).

(g) The biennial fee to be paid upon the filing of an application for renewal of provider approval shall be fixed by the board at not less than two hundred dollars ($200) nor more than three hundred dollars ($300).

(h) The penalty fee for failure to renew provider approval within the prescribed time shall be fixed at not more than 50 percent of the regular renewal fee, but not less than one hundred dollars ($100) nor more than one hundred fifty dollars ($150).

(i) The penalty for submitting insufficient funds or fictitious check, draft or order on any bank or depository for payment of any fee to the board shall be fixed at not less than fifteen dollars ($15) nor more than thirty dollars ($30).

(j) The fee to be paid for an interim permit shall be fixed by the board at not less than thirty dollars ($30) nor more than fifty dollars ($50).

(k) The fee to be paid for a temporary license shall be fixed by the board at not less than thirty dollars ($30) nor more than fifty dollars ($50).

(*l*) The fee to be paid for processing endorsement papers to other states shall be fixed by the board at not less than sixty dollars ($60) nor more than one hundred dollars ($100).

(m) The fee to be paid for a certified copy of a school transcript shall be fixed by the board at not less than thirty dollars ($30) nor more than fifty dollars ($50).

(n) The fee to be paid for a duplicate license shall be fixed by the board at not less than thirty dollars ($30) nor more than fifty dollars ($50).

(o) The fee to be paid by a registered nurse for an evaluation of his or her qualifications to use the title ''nurse practitioner'' shall be fixed by the board at not less than seventy-five dollars ($75) nor more than one hundred fifty dollars ($150).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

SEC. 8. Section 2815.1 of the Business and Professions Code is amended to read:

2815.1. As provided in subdivision (d) of Section 2815, the Board of Registered Nursing shall collect an additional ten dollar ($10) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Registered Nurse Education Fund. This assessment is separate from those fees prescribed in Section 2815.

SEC. 9. Section 2841 of the Business and Professions Code is amended to read:

2841. There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.

Within the meaning of this chapter, board, or the board, refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 10. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before some duly authorized person, that the expenses have been actually incurred.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 2878 of the Business and Professions Code is amended to read:

2878. The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) The use of excessive force upon or the mistreatment or abuse of any patient. For the purposes of this paragraph, ''excessive force'' means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(5) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(6) Failure to report the commission of any act prohibited by this section.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Procuring, aiding, abetting, attempting, or agreeing or offering to procure or assist at, a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use his or her certificate or license.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(*l*) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety

Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 12. Section 2878.1 is added to the Business and Professions Code, to read:

2878.1. (a) If a licensed vocational nurse has knowledge that another person has committed any act prohibited by Section 2878, the licensed vocational nurse shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a licensed vocational nurse shall report to the board the suspension or termination for cause of any licensed vocational nurse in its employ. In the case of licensed vocational nurses employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code and shall not be subject to discovery in civil cases.

(c) For purposes of the section, ''suspension or termination for cause'' is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice vocational nursing.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(f) The board shall implement this section contingent upon the necessary funding in the annual Budget Act.

SEC. 13. Section 2893 of the Business and Professions Code is amended to read:

2893. At least once in every calendar month, the board shall furnish the Controller a detailed statement of all moneys collected by the board under this chapter or from any other source, and, at the same time, shall pay the amount thereof to the Treasurer. On order of the Controller, the amount so paid shall be deposited in the State Treasury to the credit of the Vocational Nursing and Psychiatric Technicians Fund and to the Vocational Nurse Education Fund, as specified in Section 128500 of the Health and Safety Code.

SEC. 14. Section 2895 of the Business and Professions Code is amended to read:

2895. The amount of the fees prescribed by this chapter in connection with the issuance of licenses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application shall be in an amount not less than seventy-five dollars ($75) and may be fixed by the board at an amount no more than one hundred fifty dollars ($150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase the examination from a vendor approved by the board.

(c) The fee to be paid for any examination after the first shall be in an amount not less than seventy-five dollars ($75) and may be fixed by the board at an amount no more than one hundred fifty dollars ($150).

(d) The biennial renewal fee to be paid upon the filing of an application for renewal shall be in an amount not less than one hundred dollars ($100) and may be fixed by the board at an amount no more than one hundred fifty dollars ($150). In addition, an assessment of five dollars ($5) shall be collected and credited to the Vocational Nurse Education Fund, pursuant to Section 2895.5.

(e) Notwithstanding Section 163.5, the delinquency fee for failure to pay the biennial renewal fee within the prescribed time shall be in an amount not less than fifty dollars ($50) and may be fixed by the board at not more than 50 percent of the regular renewal fee and in no case more than seventy-five dollars ($75).

(f) The initial license fee is an amount equal to the biennial renewal fee in effect on the date the application for the license is filed.

(g) The fee to be paid for an interim permit shall be in an amount not less than forty dollars ($40) and may be fixed by the board at an amount no more than fifty dollars ($50).

(h) The fee to be paid for a duplicate license shall be in an amount not less than twenty-five dollars ($25) and may be fixed by the board at an amount no more than fifty dollars ($50).

(i) The fee to be paid for processing endorsement papers to other states shall be in an amount not less than seventy-five dollars ($75) and may be fixed by the board at an amount no more than one hundred dollars ($100).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

SEC. 15. Section 2895.5 is added to the Business and Professions Code, to read:

2895.5. As provided in subdivision (d) of Section 2895, the Board of Vocational Nursing and Psychiatric Technicians shall collect an additional five dollar ($5) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Vocational Nurses Education Fund. This assessment is separate from those fees prescribed in Section 2895.

SEC. 16. Section 4501 of the Business and Professions Code is amended to read:

4501. (a) ''Board,'' as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 4503 of the Business and Professions Code is amended to read:

4503. (a) The board shall administer and enforce this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the

conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(*l*) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(o) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 18.5. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(*l*) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(o) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the

Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 19. Section 4521.2 is added to the Business and Professions Code, to read:

4521.2. (a) If a psychiatric technician has knowledge that another person has committed any act prohibited by Section 4521, the psychiatric technician shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a psychiatric technician shall report to the board the suspension or termination for cause of any psychiatric technician in their employ. In the case of psychiatric technicians employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194. The reporting required herein shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code, and shall not be subject to discovery in civil cases.

(c) For purposes of this section, ''suspension or termination for cause'' is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the licensee's ability to safely practice as a psychiatric technician.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(f) The board shall implement this section contingent upon necessary funding being provided in the annual Budget Act.

SEC. 20. Article 4 (commencing with Section 128475) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 4. Vocational Nurse Education Program

128475. (a) The Legislature hereby finds and declares that an adequate supply of professional vocational nurses is critical to assuring the health and well-being of the citizens of California, particularly those who live in medically underserved areas, and that changes in the health care system of this state have increased the need for more highly skilled vocational nurses.

(b) The Legislature further finds and declares that in March 2002, the California Association of Health Facilities indicated that there is a shortage of 3,500 vocational nurses in long-term care facilities and estimates that 28,000 additional vocational nurses will be needed in long-term care over the next 10 years, that recently published reports indicate that vocational nurses now comprise almost 30 percent of the nation's total number of nurses and that the national vacancy rate in hospitals was about 13 percent, and that according to the California Association of Psychiatric Technicians, an additional 800 psychiatric technicians are needed due to expanding health facilities.

(c) The Legislature further finds and declares that in vocational nursing, as in other professions, certain populations are underrepresented. The Legislature also finds and declares that it is especially important that vocational nursing care be provided in a way that is sensitive to the sociocultural variables that affect a person's health. The Legislature recognizes that the financial burden of attending a school of vocational nursing is considerable and that persons from families lacking adequate financial resources may need financial assistance to complete their studies.

(d) The Legislature further finds and declares that approximately 54.1 percent of all Californians live in rural and urban areas that have been designated underserved. The shortage of vocational nurses in these areas makes it more difficult for those citizens to obtain health care and more difficult to attract and retain other health care professionals to those areas.

128480. It is the intent of the Legislature to accomplish the following:

(a) Assure an adequate supply of appropriately trained vocational nurses.

(b) Encourage persons from populations that are currently underrepresented in the profession of vocational nursing to enter that profession.

(c) Encourage vocational nurses to work in medically underserved areas.

128485. There is hereby created the Vocational Nurse Education Program within the Health Professions Education Foundation. Persons participating in this program shall be persons who agree in writing prior to completion of vocational nursing school to serve in an eligible county health facility, an eligible state-operated health facility, or a health manpower shortage area, as designated by the director of the office. Persons agreeing to serve in eligible county health facilities, eligible state-operated health facilities, or health manpower shortage areas may apply for scholarship or loan repayment. The Vocational Nurse Education Program shall be administered in accordance with Article 1 (commencing with Section 128330), except that all funds in the Vocational Nurse Education Fund shall be used only for the purpose of promoting the education of vocational nurses and related administrative costs. The Health Professions Education Foundation shall make recommendations to the director of the office concerning both of the following:

(a) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility, an eligible state-operated health facility, or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the Health Manpower Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(b) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(c) A person who qualifies for admission to a vocational nursing program that is accredited by the board of Vocational Nursing and Psychiatric Technicians may apply for funding under the Vocational Nurse Education Program by establishing a contractual agreement in accordance with subdivision (a).

(d) A person who holds a current valid license as a vocational nurse who wishes to seek an associate of science degree in nursing from an accredited college may apply for funding under the Vocational Nurse Education Program by establishing a contractual agreement in accordance with subdivision (a) unless the person is able to qualify under

subdivision (a) of Section 128385 under the Registered Nurse Education Program.

128495. In developing this program, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Vocational Nurses and Psychiatric Technicians, the California Licensed Vocational Nurses' Association, the Licensed Vocational Nurses League of California, Inc., and other vocational nurse organizations, the Chancellor of the California Community Colleges and other vocational schools, and the California Association of Hospitals and Health Systems. The foundation shall solicit the advice of representatives who reflect the demographic diversity of California.

128500. There is hereby established in the State Treasury the Vocational Nurse Education Fund. All money in the fund shall be used for the purposes specified in the California Vocational Nurse Education Program established pursuant to this article. This fund shall receive money collected pursuant to subdivision (d) of Section 2895 of the Business and Professions Code.

128501. This article shall become operative on July 1, 2004.

SEC. 21. Section 18.5 of this bill incorporates amendments to Section 4521 of the Business and Professions Code proposed by both this bill and AB 1777. 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 4521 of the Business and Professions Code, and (3) this bill is enacted after AB 1777, in which case Section 18 of this bill shall not become operative.

CHAPTER 641

An act to amend Section 11656.6 of the Insurance Code, relating to workers' compensation.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 11656.6 of the Insurance Code is amended to read:

11656.6. An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if the organization or association complies with the following conditions:

(a) Files with the commissioner or a licensed workers' compensation rating organization designated by him or her the following:

(1) A copy of its articles of incorporation and bylaws or its agreement of association and rules and regulations governing the conduct of its business, all certified by the custodian of the originals thereof.

(2) A statement setting forth its reasons for desiring insurance as a group.

(3) A statement certifying that at least 75 percent of its regular membership is engaged in a common trade or business, and an agreement that the percentage of membership will be maintained during the time that a group workers' compensation policy issued to the organization or association is in force.

(4) An agreement that only those members who are engaged in a common trade or business shall be named by the organization or association in any statement to the commissioner, a licensed workers' compensation rating organization, or insurer as eligible for insurance as a member of the group, and an agreement that it will immediately notify its insurer if any member of the organization fails to remain a member in good standing in accordance with the basic law, rules, and regulations of the organization or association.

(5) A statement in writing undertaking to establish and maintain a safety committee which, by education and otherwise, will seek to reduce the incidence and severity of accidents.

(6) An agreement in writing duly executed stating that, if the insurer notifies the organization or association of the nonpayment of a premium by an insured member of the organization or association within 60 days after the premium was due, the organization or association may be liable to pay to the insurer the amount of any past due premium that does not exceed the amount of the dividends that are due to the organization or association or its members from the insurer.

However, this agreement shall not be required, nor shall an organization or association be liable for payment, unless the governing board of the organization or association and the insurer agree in writing to use dividends due for the payment of past due premiums. The organization or association shall promptly notify the insurer of the known insolvency of any member of the group plan, and shall request, upon learning of the insolvency, removal of the member from the group plan. A copy of the resolution of the governing board of the organization or association authorizing the execution of the agreement shall be filed with the commissioner or a licensed workers' compensation rating organization designated by the commissioner and with any insurer issuing a group policy.

(b) ''Common trade or business,'' as used in this article, shall mean:

(1) In agricultural enterprises, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates

of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to farms, nurserymen, cultivating or gardening of flowers, and classifications embracing other operations that may be conducted by a nonprofit cooperative association composed of producer members and combinations of nonprofit cooperative agricultural marketing associations having a central organization composed of member associations.

(2) In the building and construction industry, operations in the construction or repair of commercial or residential buildings or in general engineering construction in which the principal payroll develops under any combination of the classifications applicable to the construction or repair as they appear in the Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance approved by the Insurance Commissioner. Commercial buildings, as defined in this paragraph, shall mean any nonresidential buildings.

(3) In the transportation and warehousing industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to for-hire motor carriers subject to regulation by the Public Utilities Commission and warehousemen.

(4) In the timber and lumber industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to land clearing, logging or lumbering, log, chip, and lumber hauling, planing or molding mills, sawmills or shingle mills, veneer or veneer products manufacturing, box or box shook manufacturing, cabinet works, door, door frame, or sash manufacturing and wood fiber preparation. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of this subdivision shall be included in any combination of classifications authorized by this paragraph.

(5) For public agencies providing industrial, domestic, or agricultural water service, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to irrigation, drainage, reclamation, or waterworks operations.

(6) For sheltered workshops and rehabilitation facilities licensed pursuant to Section 1191.5 of the Labor Code, operations in which the principal payroll of the employer develops under any combination of classifications of the Manual of Rules, Classifications and Basic Rates

of Workers' Compensation Insurance approved by the Insurance Commissioner.

(7) For all other enterprises, operations in which the principal payroll develops under a single manual classification or a combination of classifications under which a group policy may be issued pursuant to subdivision (d).

(8) For manufacturing facilities as identified in Sector 31 to 33, inclusive, of the North American Industry Classification System (NAICS), operations in which the principal payroll of the employer develops under any combination of classifications of the Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner applicable to establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.

(c) Except as provided in subdivision (d), ''principal payroll,'' for the purpose of this section, means not less than 51 percent of the total payroll for the preceding policy year or, in the case of an employer who has no preceding full year's payroll, not less than 51 percent of his or her estimated annual payroll. Principal or estimated annual payroll shall not include the payroll of those employees set forth in the standard exceptions contained in the Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner.

(d) An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if, in addition to complying with the conditions set forth in subdivision (a), the organization or association has had at least 50 percent of its present membership for at least one year prior to the issuance of the policy, and not less than 75 percent of the payroll of each employer to be insured under the group policy developed under the same two manual classifications, or either of them, for the preceding policy year or, in the case of an employer who has had no preceding full-year's payroll, not less than 75 percent of his estimated annual payroll develops under the classification or classifications. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of subdivision (b) shall be included in any combination of classifications authorized by this subdivision.

CHAPTER 642

An act to amend Section 12955.1 of, and to add Section 12955.1.1 to, the Government Code, relating to fair housing.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 12955.1 of the Government Code is amended to read:

12955.1. (a) For purposes of Section 12955, ''discrimination'' includes, but is not limited to, a failure to design and construct a covered multifamily dwelling in a manner that allows access to, and use by, disabled persons by providing, at a minimum, the following features:

(1) All covered multifamily dwellings shall have at least one building entrance on an accessible route, unless it is impracticable to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticability because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(2) All covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in a manner that complies with all of the following:

(A) The public and common areas are readily accessible to and usable by persons with disabilities.

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons in wheelchairs.

(C) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall, and shower seat, where those facilities are provided.

(iv) Useable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

(b) (1) For purposes of Section 12955, ''discrimination'' includes, but is not limited to, a failure to design and construct 10 percent of the multistory dwelling units in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units in a manner that incorporates an accessible

route to the primary entry level entrance and that meets the requirements of paragraph (2) of subdivision (a) with respect to the ground floor, at least one bathroom on the primary entry level and the public and common areas. Any fraction thereof shall be rounded up to the next whole number. For purposes of this subdivision, ''elevator'' does not include an elevator that serves only the first ground floor or any nonresidential area. In multistory dwelling units in these buildings without elevators, the ''primary entry level entrance'' means the principal entrance through which most people enter the dwelling unit, as designated by the California Building Standards Code or, if not designated by California Building Standards Code, by the building official. To determine the total number of multistory dwelling units subject to this subdivision, all multistory dwelling units in the buildings subject to this subdivision on a site shall be considered collectively. This subdivision shall not be construed to require an elevator within an individual multistory dwelling unit or within a building subject to this subdivision. This subdivision shall apply only to multistory dwelling units in a building subject to this subdivision for which an application for a construction permit is submitted on or after July 1, 2005.

(2) Notwithstanding subdivision (c), the Division of the State Architect and the Department of Housing and Community Development may adopt regulations to clarify, interpret, or implement this subdivision, if either of them deem it necessary and appropriate.

(c) Notwithstanding Section 12935, regulations adopting building standards necessary to implement, interpret, or make specific the provisions of this section shall be developed by the Division of the State Architect for public housing and by the Department of Housing and Community Development for all other residential occupancies, and shall be adopted pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of the Health and Safety Code. Prior to the effective date of regulations adopted pursuant to this subdivision, existing federal accessibility standards that provide, to persons with disabilities, greater protections than existing state accessibility regulations shall apply. After regulations pursuant to this subdivision become effective, particular state regulations shall apply if they provide, to persons with disabilities, the same protections as, or greater protections than, the federal standards. If particular federal regulations provide greater protections than state regulations, then those federal standards shall apply. If the United States Department of Housing and Urban Development determines that any portion of the state regulations are not equivalent to the federal standards, the federal standards shall, as to those portions, apply to the design and construction of covered multifamily dwellings until the state regulations are brought into compliance with the federal standards. The appropriate state agency shall provide notice pursuant to

the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 5 of Division 3 of Title 2) of that determination.

(d) In investigating discrimination complaints, the department shall apply the building standards contained in the California Building Standards Code to determine whether a covered multifamily dwelling is designed and constructed for access to and use by disabled persons in accordance with this section.

(e) The building standard requirements for persons with disabilities imposed by this section shall meet or exceed the requirements under the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.) and the existing state law building standards contained in the California Building Standards Code.

SEC. 2. Section 12955.1.1 is added to the Government Code, to read:

12955.1.1. For purposes of Section 12955.1, the following definitions shall apply:

(a) ''Covered multifamily dwellings'' means both of the following:

(1) Buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings have at least one elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(2) The ground floor dwelling units in buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings do not have an elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(b) ''Multistory dwelling unit'' means a condominium dwelling unit or rental apartment with finished living space on one floor and the floor immediately above or below it or, if applicable, the floors immediately above and below it.

CHAPTER 643

An act to add Sections 14504, 14504.1, 14504.2, and 14504.3 to the Welfare and Institutions Code, relating to family planning.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 14504 is added to the Welfare and Institutions Code, to read:

14504. (a) The Male Involvement Program shall be a continuing program within the Office of Family Planning with the goal of reducing teenage pregnancy through promoting primary prevention skills and motivation in adolescent boys and young men. In order to accomplish this goal, the program shall assist local programs to do all of the following:

(1) Increase community and individual awareness regarding the importance of the roles and responsibilites of adolescent boys and young men in the reduction of teenage pregnancies.

(2) Reinforce community values that support these roles and responsibilities.

(3) Increase knowledge, skills, and motivation of at-risk adolescent boys and young adult men in order to actively promote their role in reducing teenage pregnancies.

(b) Grants shall be made available to qualifying public or private nonprofit providers for implementation of the Male Involvement Program.

(c) This section shall be implemented to the extent funding is made available through the federal government, or in the annual Budget Act or another state statute, or any combination of any sources of funding.

SEC. 2. Section 14504.1 is added to the Welfare and Institutions Code, to read:

14504.1. (a) The Community Challenge Grants Program shall be a continuing program within the Office of Family Planning with the goal of reducing the number of teenage pregnancies and teenage single parents, and promoting responsible parenting and the involvement of the biological father in economic, social, and emotional support of his children.

(b) The program may target the following specific population groups:

(1) Presexually active adolescents.

(2) Sexually active adolescents.

(3) Pregnant and parenting teens.

(4) Parents and families.

(5) Adults at risk for unwed motherhood or absentee fatherhood.

(c) School-based programs that include sexuality education shall comply with the requirements of Section 51553 of the Education Code relative to the content of sex education courses, Section 51201.5 of the Education Code, which governs HIV/AIDS prevention, and Section 220 of the Education Code, which prohibits discrimination in schools based on sexual orientation.

(d) Grants shall be made available to qualifying community-based nonprofit organizations and priority shall be given to those organizations with community-based partnerships that have developed effective local prevention programs.

(e) This section shall be implemented to the extent funding is made available through the federal government, or in the annual Budget Act or another state statute, or any combination of any sources of funding.

SEC. 3. Section 14504.2 is added to the Welfare and Institutions Code, to read:

14504.2. (a) The TeenSMART Program shall be a continuing program within the Office of Family Planning with the goal of reducing teenage pregnancies and reducing the incidence of sexually transmitted infections among sexually active teens through enhanced reproductive health care counseling, pregnancy prevention education, and sexually transmitted infection risk reduction efforts for adolescents accessing Family PACT TeenSMART clinics.

(b) The services to be provided through TeenSMART shall include counseling services and outreach in local communities to assist teens who are at high risk of pregnancy to access clinical family planning services. Outreach activities may include, but are not limited to, establishing referral networks, providing information about clinic services to teens in either formal group presentations or small group education and counseling sessions, and one-on-one education and counseling sessions.

(c) Grants shall be made available to qualified public or private nonprofit providers for implementation of the TeenSMART Program.

(d) This section shall be implemented to the extent funding is made available through the federal government, or in the annual Budget Act or another state statute, or any combination of any sources of funding.

SEC. 4. Section 14504.3 is added to the Welfare and Institutions Code, to read:

14504.3. (a) The Information and Education Program shall be a continuing program within the Office of Family Planning with the goal of decreasing teenage pregnancies through educational programs that equip teens at high risk for pregnancy with the knowledge, understanding, and behavioral skills necessary to make responsible decisions regarding at-risk behavior.

(b) (1) The program shall target youths in a variety of settings, including, but not limited to, schools, juvenile justice facilities, community-based settings, social services and youth agencies, and foster care programs.

(2) The program shall also focus on parents of high-risk youths and other adults responsible for serving youths at risk in an effort to assist

them with effective tools for counseling at-risk youth regarding responsible behavior.

(c) Priority for funding under this program shall be given to the following:

(1) Programs that will increase youths' knowledge and ability to deal responsibly with their own sexuality and the social pressures affecting them.

(2) Programs that will enhance the ability of parents and other parenting adults to fulfill their roles as the primary sex educators of their children.

(d) Grants shall be made available to qualified public or private nonprofit providers for implementation of the Information and Education Program.

(e) This section shall be implemented to the extent funding is made available through the federal government, or in the annual Budget Act or another state statute, or any combination of any sources of funding.

CHAPTER 644

An act to add Section 2281 to the Business and Professions Code, relating to the healing arts.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. The Legislature finds that, according to an article in the Wall Street Journal on March 12, 2003, medical students often are allowed by their training physicians to practice pelvic examinations in operating rooms on a patient who is unconscious and has not given explicit consent to the examination. Pursuant to the practice, the training physician performs the examination first, and the medical student repeats the examination.

SEC. 2. Section 2281 is added to the Business and Professions Code, to read:

2281. A physician and surgeon or a student undertaking a course of professional instruction or a clinical training program, may not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient gave informed consent to the pelvic examination, or the performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination to be performed on the

patient or, in the case of an unconscious patient, the pelvic examination is required for diagnostic purposes.

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 645

An act to add Chapter 8.7 (commencing with Section 25770) to Division 15 of the Public Resources Code, relating to tire efficiency.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 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) Substantial evidence indicates that replacement tires for passenger cars and light trucks are less energy efficient, on average, than tires installed as original equipment.

(2) Improving the energy efficiency of replacement tires for California's passenger and light truck fleet could yield significant economic and environmental benefits without affecting vehicle performance or safety, while also reducing California's vulnerability to oil price increases.

(3) There are strong indications that technologies are available to make replacement tires more energy efficient and longer lasting.

(4) According to a January 2003 report by the State Energy Resources Conservation and Development Commission, titled ''California State Fuel Efficient Tire Report: Volume 1,'' energy efficient tires have the potential to significantly reduce fuel consumption by California drivers, resulting in significant cost and fuel savings. According to the report, adequate tire pressure will also promote fuel savings, and a specified tire testing procedure developed by the Society of Automotive Engineers should be used to measure the fuel efficiency of tires.

(b) It is the intent of the Legislature to provide the statutory framework to ensure that replacement tires sold in California are at least as energy efficient, on average, as original-equipment tires.

(c) It is further the intent of the Legislature that the Replacement Tire Efficiency Program not increase the amount of scrap tires generated within California, nor negatively impact state efforts to manage scrap tires pursuant to the California Tire Recycling Act.

SEC. 2. Chapter 8.7 (commencing with Section 25770) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.7. REPLACEMENT TIRE EFFICIENCY PROGRAM

25770. For the purposes of this chapter, the following terms have the following meanings:

(a) ''Board'' means the California Integrated Waste Management Board established pursuant to Division 30 (commencing with Section 40000).

(b) ''Consumer information requirement'' means point-of-sale information or signs that are conspicuously displayed, readily accessible, and written in a manner that can be easily understood by the consumer. ''Consumer information requirement'' does not include mandatory labeling, imprinting, or other marking, on an individual tire by the tire manufacturer or the tire retailer.

(c) ''Cost effective'' means the cost savings to the consumer resulting from a replacement tire subject to an energy efficiency standard that equals or exceeds the additional cost to the consumer resulting from the standard, taking into account the expected fuel cost savings over the expected life of the replacement tire.

(d) ''Replacement tire'' means a tire sold in the state that is designed to replace a tire sold with a new passenger car or light-duty truck. ''Replacement tire'' does not include any of the following tires:

(1) A tire or group of tires with the same SKU, plant, and year, for which the volume of tires produced or imported is less than 15,000 annually.

(2) A deep tread, winter-type snow tire, a space-saver tire, or a temporary use spare tire.

(3) A tire with a nominal rim diameter of 12 inches or less.

(4) A motorcycle tire.

(5) A tire manufactured specifically for use in an off-road motorized recreational vehicle.

25771. On or before July 1, 2006, the commission shall develop and adopt all of the following:

(a) A database of the energy efficiency of a representative sample of replacement tires sold in the state, based on test procedures adopted by the commission.

(b) Based on the data collected pursuant to subdivision (a), a rating system for the energy efficiency of replacement tires sold in the state, that will enable consumers to make more informed decisions when purchasing tires for their vehicles.

(c) Based on the test procedures adopted pursuant to subdivision (a) and the rating system established pursuant to subdivision (b), requirements for tire manufacturers to report to the commission the energy efficiency of replacement tires sold in the state.

25772. On or before July 1, 2007, the commission, in consultation with the board, shall, after appropriate notice and workshops, adopt and, on or before July 1, 2008, implement, a tire energy efficiency program of statewide applicability for replacement tires, designed to ensure that replacement tires sold in the state are at least as energy efficient, on average, as tires sold in the state as original equipment on new passenger cars and light-duty trucks.

25773. (a) The program described in Section 25772 shall include all of the following:

(1) The development and adoption of minimum energy efficiency standards for replacement tires, except to the extent that the commission determines that it is unable to do so in a manner that complies with subparagraphs (A) to (E), inclusive. Energy efficiency standards adopted pursuant to this paragraph shall meet all of the following conditions:

(A) Be technically feasible and cost effective.

(B) Not adversely affect tire safety.

(C) Not adversely affect the average tire life of replacement tires.

(D) Not adversely affect state efforts to manage scrap tires pursuant to Chapter 17 (commencing with Section 42860) of Part 3 of Division 30.

(2) The development and adoption of consumer information requirements for replacement tires for which standards have been adopted pursuant to paragraph (1).

(b) The energy efficiency standards established pursuant to paragraph (1) of subdivision (a) shall be based on the results of laboratory testing and, to the extent it is available and deemed appropriate by the commission, an onroad fleet testing program developed by tire manufacturers in consultation with the commission and the board, conducted by tire manufacturers, and submitted to the commission on or before January 1, 2006.

(c) If the commission finds that tires used to equip an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, are unable to meet the standards established pursuant to paragraph (1) of

subdivision (a), the commission shall authorize an operator of an authorized emergency vehicle fleet to purchase for those vehicles tires that do not meet those standards.

(d) The commission, in consultation with the board, shall review and revise the program, including any standards adopted pursuant to the program, as necessary, but not less than once every three years. The commission may not revise the program or standards in a way that reduces the average efficiency of replacement tires.

CHAPTER 646

An act to amend Sections 5102, 5111, 5133, 5311, and 5316 of, to add Sections 5142, 5143, and 5317.5 to, and to add Article 5.4 (commencing with Section 5243) to Chapter 7 of Division 2 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 5102 of the Public Utilities Code is amended to read:

5102. The use of the public highways for the transportation of used household goods and personal effects for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways; to secure to the people just, reasonable, and nondiscriminatory rates for transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all carriers so that adequate and dependable service by all necessary carriers shall be maintained and the full use of the highways preserved to the public; and to promote fair dealing and ethical conduct in the rendition of services involving or incident to the transportation of household goods and personal effects.

SEC. 2. Section 5111 of the Public Utilities Code is amended to read:

5111. This chapter shall not be construed as a regulation of commerce with foreign nations or among the several states, except insofar as such regulation is not prohibited under the provisions of the Constitution and the acts of the Congress of the United States.

SEC. 3. Section 5133 of the Public Utilities Code is amended to read:

5133. (a) No household goods carrier shall engage, or attempt to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in this state, including advertising, soliciting, offering, or entering into an agreement regarding the transportation of used household goods and personal effects, unless the following is satisfied:

(1) For transportation of household goods and personal effects entirely within this state, there is in force a permit issued by the commission authorizing those operations.

(2) For transportation of household goods and personal effects from this state to another state or from another state to this state, there is in force a valid operating authority issued by the Federal Motor Carrier Safety Administration.

(b) A household goods carrier that engages, or attempts to engage, in the business of the transportation of used household goods and personal effects in violation of subdivision (a) may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain any other relief from any consignor, consignee, or owner of household goods or personal effects in connection with an agreement to transport, or the transportation of, household goods and personal effects or any related services. A person who utilizes the services of a household goods carrier operating in violation of subdivision (a) may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to that household goods carrier.

(c) The operation of a motor vehicle used in the business of transporting household goods and personal effects by a household goods carrier that does not possess a valid permit or operating authority, as required by subdivision (a), constitutes a public nuisance. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove any motor vehicle located within the territorial limits in which the officer may act, when the vehicle is found upon a highway and is being used in a manner constituting a public nuisance. At the request of the commission, the Attorney General, district attorney, city attorney, or county counsel, the law enforcement agency may impound the vehicle for a period not to exceed 72 hours to enable the requesting agency to abate the public nuisance, to obtain an order from the superior court of the county in which the vehicle has been impounded to prevent the use of the motor vehicle in violation of law, and to obtain any other remedy available under law as permitted by Section 5316.

SEC. 4. Section 5142 is added to the Public Utilities Code, to read:

5142. (a) Except as provided in Section 5133, a household goods carrier in compliance with this chapter has a lien on used household goods and personal effects to secure payment of the amount specified in subdivision (b) for transportation and additional services ordered by the consignor. No lien attaches to food, medicine, or medical devices, items used to treat or assist an individual with a disability, or items used for the care of a minor child.

(b) (1) The amount secured by the lien is the maximum total dollar amount for the transportation of the household goods and personal effects and any additional services (including any bona fide change order permitted under the commission's tariffs) that is set forth clearly and conspicuously in writing adjacent to the space reserved for the signature of the consignor and that is agreed to by the consignor before any goods or personal effects are moved from their location or any additional services are performed.

(2) The dollar amount for the transportation of household goods and personal effects and additional services may not be preprinted on any form, shall be just and reasonable, and shall be established in good faith by the household goods carrier based on the specific circumstances of the services to be performed.

(c) Upon tender to the household goods carrier of the amount specified in subdivision (b), the lien is extinguished, and the household goods carrier shall release all household goods and personal effects to the consignee.

(d) Any person having possession or control of household goods or personal effects, who knows, or through the exercise of reasonable care should know, that the household goods carrier has been tendered the amount specified in subdivision (b), shall release the household goods and personal effects upon the request of the consignor or consignee.

(e) Nothing in this section affects any rights, if any, of a household goods carrier to claim additional amounts, on an unsecured basis, or of a consignor or consignee to make or contest any claim, and tender of payment of the amount specified in subdivision (b) is not a waiver of claims by the consignor or consignee.

(f) Any person injured by a violation of this section may bring an action for the recovery of the greater of one thousand dollars ($1,000) or actual damages, injunctive or other equitable relief, reasonable attorney's fees and costs, and exemplary damages of not less than three times the amount of actual damages for a willful violation.

(g) Any waiver of this section shall be void and unenforceable.

(h) Notwithstanding any other law, this section exclusively establishes and provides for a household goods carrier's lien on used household goods and personal effects to secure payment for transportation and additional services ordered by the consignor.

(i) For purposes of this section, the following terms have the following meaning:

(1) ''Consignor'' means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

(2) ''Consignee'' means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person's agent.

SEC. 5. Section 5143 is added to the Public Utilities Code, to read:

5143. (a) For purposes of this section, the following terms have the following meaning:

(1) ''Consignor'' means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person's agent.

(2) ''Consignee'' means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person's agent.

(b) Any household goods carrier engaged in the business of transportation of used household goods and personal effects by motor vehicle over any public highway in this state shall provide each consignor with a completed copy of the notice set forth in this section. The notice shall be printed in at least 12-point type, except the title and first two paragraphs which shall be printed in boldface type, and provided to each consignor at least three days prior to the date scheduled for the transportation of household goods or personal effects. If the consignor requests services on a date that is less than three days before the scheduled date for transportation of the household goods or personal effects, the carrier shall provide the notice as soon as practicable, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice. The carrier shall obtain sufficient information from the consignor to fill out the form and shall include the correct maximum amount and a sufficient description of services that will be performed. The carrier shall retain a copy of the notice, signed by the cosignor, for at least three years from the date the notice was signed by the cosignor.

(c) Any waiver of the requirements of this section is void and unenforceable.

(d) The ''Not To Exceed'' amount set forth in the notice and the agreement between the household goods carrier and the consignor shall be the maximum total dollar amount for which the consignor may be liable for the transportation of household goods and personal effects and any additional services ordered by the consignor (including any bona fide change order permitted under the commission's rules and tariffs)

and agreed to by the consignor before any goods or personal effects are moved from their location or any other services are performed.

(e) A household goods carrier may provide the notice set forth in this section either as a separate document or by including it as the centerfold of the informational booklet that the household goods carrier is required to provide the consignor under the commission's tariffs. If the household goods carrier provides the notice as part of the informational booklet, the booklet shall contain a tab that extends beyond the edge of the booklet at the place where the notice is included. The statement ''Important Notice'' shall be printed on the tab in at least 12-point boldface type. In addition, the statement ''Customer Must Read And Sign The Important Notice In The Middle Of This Booklet Before A Move Can Begin'' shall be set forth in 14-point boldface type on the front cover of the booklet.

(f) The notice provided the consignor shall be in the following form:

''IMPORTANT NOTICE ABOUT YOUR MOVE

''IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A ''NOT TO EXCEED'' AMOUNT THAT YOU THINK IS A PROPER AND REASONABLE FEE FOR THE SERVICES YOU ARE REQUESTING. THE ''NOT TO EXCEED'' AMOUNT THIS MOVER IS REQUESTING IS $_____ to perform the following services:

_____
_____

_____
_____

_____
_____.

''IF YOU DO NOT AGREE TO THE ''NOT TO EXCEED'' AMOUNT LISTED OR THE DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER'S SERVICE AT NO CHARGE TO YOU.

''If you request additional or different services at the time of the move, you may be asked to complete a Change Order which will set forth your agreement to pay for additional fees for those newly requested services. If you agree to the additional charges on that Change Order, those charges may be added to the ''NOT TO EXCEED'' amount set forth

above. If you do not agree to the amounts listed in the Change Order, you should not sign it and may refuse the mover's services.

''A mover cannot refuse to release your goods once you have paid the ''NOT TO EXCEED'' amount for the transportation of your goods and personal effects and any additional services that you have agreed to in writing. The ''NOT TO EXCEED'' amount must be reasonable.

''A mover cannot, under any circumstances, withhold food, medicine, medical devices, items to treat or assist a disabled person, or items used for care of a minor child. An unlicensed mover has no right to withhold your goods for any reason including claims that you have not adequately paid for services rendered.

''For additional information or to confirm whether a mover is licensed by the California Public Utilities Commission, please call the Public Utilities Commission toll free at:

_____.
insert toll-free number

''I have completed this form and provided the consumer (shipper) with a copy of this notice.

''Signed _____
Dated_____

''I have been provided with a copy of this form.

Signed _____ Dated _____''

SEC. 6. Article 5.4 (commencing with Section 5243) is added to Chapter 7 of Division 2 of the Public Utilities Code, to read:

Article 5.4. Subhauling Agreements

5243. No household goods carrier may transport household goods under a subhauling agreement unless each of the following occurs:

(a) The subhauler is licensed by the commission to transport household goods and complies with the requirements of this chapter.

(b) The household goods carrier and subhauler are jointly and severally liable for any loss or damage caused by the subhauler.

5244. The commission shall adopt any rules and regulations it determines to be necessary to enforce the requirements of this article.

5244.5. This article does not apply to a subhauling agreement when the subhauler is not otherwise subject to this chapter for activity related to the subhauling agreement.

SEC. 7. Section 5311 of the Public Utilities Code is amended to read:

5311. (a) Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than three months, or both. If a violation is willful, each willful violation is punishable by fine of not more than ten thousand dollars ($10,000) or by imprisonment in the county jail for not more than one year, or both.

(b) Any person who violates subdivision (a) of Section 5133, is guilty of a misdemeanor, and is punishable by fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year, or both, for each violation.

SEC. 8. Section 5316 of the Public Utilities Code is amended to read:

5316. All remedies and penalties accruing under this chapter are cumulative to each other and to the remedies and penalties available under any other law, and a suit for the recovery of one remedy or penalty does not bar or affect the recovery of any other remedy, penalty, or forfeiture or bar any criminal prosecution against any person or corporation, or any officer, director, agent or employee thereof, or any other corporation or person, or bar the exercise by the commission of its power to punish for contempt.

SEC. 9. Section 5317.5 is added to the Public Utilities Code, to read:

5317.5. The commission shall ensure that this chapter is enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county may aid in any investigation, hearing, or trial had under this chapter. The Attorney General, a district

attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction involving the transportation of household goods and personal effects.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 647

An act to amend Section 676.10 of the Insurance Code, relating to insurance.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 676.10 of the Insurance Code is amended to read:

676.10. (a) This section applies to policies covered by Section 675, 675.5, or 676.5 if the insured is a religious organization described in clause (i) of subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of Title 26 of the United States Code, an educational organization described in clause (ii) of subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of Title 26 of the United States Code, or other nonprofit organization described in clause (vi) of subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of Title 26 of the United States Code that is organized and operated for religious, charitable, or educational purposes, or a reproductive health services facility, as defined in subdivision (h) of Section 423.1 of the Penal Code, or its administrative offices.

(b) No insurer issuing policies subject to this section shall cancel or refuse to renew the policy, nor shall any premium be excessive or

unfairly discriminatory solely on the basis that one or more claims has been made against the policy during the preceding 60 months for a loss that is the result of a hate crime committed against the person or property of the insured, or an anti-reproductive-rights crime.

(c) As it relates to this section, if determined by a law enforcement agency, a ''hate crime'' may include any of the following:

(1) By force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. However, the foregoing offense does not include speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

(2) Knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(d) As it relates to this section, if determined by a law enforcement agency, ''anti-reproductive-rights crime'' shall have the meaning set forth in subdivision (a) of Section 13776 of the Penal Code, and shall also include a violation of subdivision (e) of Section 423.2 of the Penal Code, if the crime results in a covered loss under a policy subject to this section.

(e) Upon cancellation of or refusal to renew a policy subject to this section after an insured has submitted a claim to the insurer that is the result of a hate crime committed against the person or property of the insured, or an anti-reproductive-rights crime, the insurer shall report the cancellation or nonrenewal to the commissioner.

(f) A violation of this section shall be an unfair practice subject to Article 6.5 (commencing with Section 790) of Chapter 1 of Division 2.

(g) Nothing in this section shall prevent an insurer subject to this section from taking any of the actions set forth in subdivision (b) on the basis of criteria not otherwise made invalid by this section or any other act, regulation, or law.

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CHAPTER 648

An act to add Section 17959.6 to the Health and Safety Code, relating to housing.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 17959.6 is added to the Health and Safety Code, to read:

17959.6. (a) Ninety days after the Department of Housing and Community Development certifies and makes available a standard form pursuant to subdivision (h), but in no event sooner than July 1, 2004, for housing developments for which a building permit application is submitted on or after that date, a developer of any new for-sale residential housing development, including, but not limited to, a single family dwelling, duplex, triplex, townhouse, condominium, or other homes, shall provide to a buyer a list of universal accessibility features that would make the home entrance, interior routes of travel, the kitchen, and the bathrooms fully accessible to persons with disabilities.

(b) (1) (A) The list shall include the features described in paragraphs (2) to (7), inclusive, and any others that the developer deems necessary or appropriate to effectuate the purposes of this section.

(B) To the extent that any of the features described in paragraphs (2) to (7), inclusive, are included in Chapter 11A of the California Building Code (Part 2 of Title 24 of the California Code of Regulations), they shall be listed consistent with, and shall be installed in a manner at least consistent with, that chapter. A developer that lists and installs materials and features in a manner at least consistent with Chapter 11A or successor chapters of the California Building Code, shall be deemed to be in compliance with the requirements of this subparagraph. Other features shall be listed and installed in a manner appropriate to effectuate the purposes of this section.

(C) Notwithstanding subparagraph (B), the developer and buyer may agree in writing to different standards than those provided in subparagraph (B) if the different standards and their deviation from the standards in subparagraph (B) are clearly disclosed.

(2) General external adaptations:

(A) Accessible route of travel to the dwelling unit.

(B) Accessible landscaping of the side and rear yards.

(C) Accessible route from the garage or parking area to the dwelling unit primary and secondary entries.

(3) Doors, openings, and entries:

(A) Accessible primary front door, doorway, and threshold.

(B) Accessible interior doors and doorways.

(C) Accessible secondary exterior doors, doorways, and thresholds.

(D) Accessible levered handles on all specified doors.

(E) An entry door sidelight or high and low peephole viewers.

(F) Visual fire alarms and visual doorbells.

(G) Accessible sliding glass door.

(4) General interior adaptations:

(A) Accessible routes to at least one bedroom, bathroom, and kitchen from the primary entrance.

(B) Accessible switches, outlets, and thermostats.

(C) Visual fire alarms and visual doorbells.

(D) Rocker light switches.

(E) Closet rods and shelves adjustable from three feet to five feet six inches high.

(F) A residential elevator or lift.

(G) If provided, a service porch with accessible workspace, cabinets, and appliances.

(5) Kitchen:

(A) Adequate accessible clear floorspace at appliances.

(B) Repositionable sink and countertop workspaces.

(C) Accessible cabinets and drawers, including pullout shelves, bread boards, and Lazy Susans.

(D) Accessible sink features and controls.

(E) Accessible built-in or provided appliances, including refrigerator, stove, oven, dishwasher, and countertop microwave or convection oven.

(F) Enhancements such as a contrasting color edge at countertops, contrasting floor designs marking accessible routes and work areas, antiscald device on plumbing fixtures, and undercabinet lighting.

(6) Bathrooms and powder rooms (applicable to one or more bathrooms, at the option of the buyer):

(A) Grab bar backing and grab bars in all requested locations.

(B) Accessible clear floorspace and turning circles.

(C) Accessible sink (lavatory) with adequate knee space and protection.

(D) Accessible toilet (water closet).

(E) Accessible roll-in shower in lieu of a standard tub or shower.

(F) Accessible faucet handles and an adjustable handheld showerhead.

(G) Enhancements such as a contrasting color edge at countertops, contrasting floor designs marking accessible routes and work areas, and antiscald device on plumbing fixtures.

(7) Any other external or internal feature requested at a reasonable time by the buyer that is reasonably available and reasonably feasible to

install or construct and makes the residence more usable for a person with disabilities in order to accommodate any type of disability.

(c) For each feature on the list required by subdivision (b), the developer shall indicate whether the feature is standard, limited, optional, or not available.

(d) If a developer chooses to offer those features listed in subdivision (b) as modifications that may be made to a home, the developer shall indicate on the list required by subdivision (b) at what point in the construction process the buyer must notify the developer that the buyer wishes to purchase the features.

(e) If a local jurisdiction adopts a model ordinance developed pursuant to Section 17959 that requires developers to provide standard or optional accessibility features in homes described in subdivision (b), a developer subject to that ordinance is required to include on the list required by subdivision (b) only those features beyond those required by the ordinance.

(f) Nothing in this section shall be construed to require a developer to provide the features listed in subdivision (b) during the construction process or at any other time, unless the developer has offered to provide a feature and the buyer has requested it and agreed to provide payment.

(g) Any willful violation by a developer of this section shall be punishable by a civil penalty of five hundred dollars ($500).

(h) The department may adopt regulations that it determines are necessary and appropriate for the use and enforcement of this section. The regulations may include, but not be limited to, providing specificity to any features not otherwise covered as mandatory features in Chapter 11A or 11B of the California Building Code, additional mandatory requirements for forms, and additional procedures for offer or acceptance of features. The department may develop, certify, and make available a standard form providing the information required by this section, except for costs, and that standard form shall be exempt from adoption pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). A developer's use of a form substantially the same as that developed and distributed by the department shall be deemed to comply with this section.

(i) Pursuant to Section 17959, upon adoption by the department of guidelines or a model ordinance that defines those features deemed to provide universal accessibility, those guidelines or that model ordinance shall supersede the features listed in subdivision (b).

(j) This section shall not be construed to require action by the California Building Standards Commission pursuant to the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 649

An act to amend, repeal, and add Section 1808.22 of the Vehicle Code, relating to the Department of Motor Vehicles.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 1808.22 of the Vehicle Code is amended to read:

1808.22. (a) Section 1808.21 does not apply to a financial institution licensed by the state or federal government to do business in the State of California which states under penalty of perjury that it has obtained a written waiver of Section 1808.21 signed by the individual whose address is requested, or to providing the address of any person who has entered into an agreement held by that institution prior to July 1, 1990, so long as that agreement remains in effect.

(b) Section 1808.21 does not apply to an insurance company licensed to do business in California when the company, under penalty of perjury, requests the information for the purpose of obtaining the address of another motorist or vehicle owner involved in an accident with their insured, or requests the information on an individual who has signed a written waiver of Section 1808.21 or the individuals insured under a policy if a named insured of that policy has signed a written waiver.

(c) Section 1808.21 does not apply to an attorney when the attorney states, under penalty of perjury, that the motor vehicle or vessel registered owner or driver residential address information is necessary in order to represent his or her client in a criminal or civil action which directly involves the use of the motor vehicle or vessel that is pending, is to be filed, or is being investigated. Information requested pursuant to this subdivision is subject to all of the following:

(1) The attorney shall state that the criminal or civil action that is pending, is to be filed, or is being investigated relates directly to the use of that motor vehicle or vessel.

(2) The case number, if any, or the names of expected parties to the extent they are known to the attorney requesting the information, shall be listed on the request.

(3) A residence address obtained from the department shall not be used for any purpose other than in furtherance of the case cited or action to be filed or which is being investigated.

(4) If no action is filed within a reasonable time, the residence address information shall be destroyed.

(5) No attorney shall request residence address information pursuant to this subdivision in order to sell the information to any person.

(6) Within 10 days of receipt of a request, the department shall notify every individual whose residence address has been requested pursuant to this subdivision.

(d) As used in subdivision (c), a criminal or civil action or case does not include an action or case taken on behalf of a private parking owner or private parking entity in order to pursue fees or delinquent charges arising from parking notices issued on private property.

(e) A knowing violation of paragraph (1), (2), (3), (4), or (5) of subdivision (c) is a misdemeanor. A knowing violation of paragraph (1), (2), (3), (4), or (5) of subdivision (c) in furtherance of another crime is subject to the same penalties as that other crime.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 1808.22 is added to the Vehicle Code, to read:

1808.22. (a) Section 1808.21 does not apply to a financial institution licensed by the state or federal government to do business in the State of California which states under penalty of perjury that it has obtained a written waiver of Section 1808.21 signed by the individual whose address is requested, or to providing the address of any person who has entered into an agreement held by that institution prior to July 1, 1990, so long as that agreement remains in effect.

(b) Section 1808.21 does not apply to an insurance company licensed to do business in California when the company, under penalty of perjury, requests the information for the purpose of obtaining the address of another motorist or vehicle owner involved in an accident with their insured, or requests the information on an individual who has signed a written waiver of Section 1808.21 or the individuals insured under a policy if a named insured of that policy has signed a written waiver.

(c) Section 1808.21 does not apply to an attorney when the attorney states, under penalty of perjury, that the motor vehicle or vessel

registered owner or driver residential address information is necessary in order to represent his or her client in a criminal or civil action which directly involves the use of the motor vehicle or vessel that is pending, is to be filed, or is being investigated. Information requested pursuant to this subdivision is subject to all of the following:

(1) The attorney shall state that the criminal or civil action that is pending, is to be filed, or is being investigated relates directly to the use of that motor vehicle or vessel.

(2) The case number, if any, or the names of expected parties to the extent they are known to the attorney requesting the information, shall be listed on the request.

(3) A residence address obtained from the department shall not be used for any purpose other than in furtherance of the case cited or action to be filed or which is being investigated.

(4) If no action is filed within a reasonable time, the residence address information shall be destroyed.

(5) No attorney shall request residence address information pursuant to this subdivision in order to sell the information to any person.

(6) Within 10 days of receipt of a request, the department shall notify every individual whose residence address has been requested pursuant to this subdivision.

(d) A knowing violation of paragraph (1), (2), (3), (4), or (5) of subdivision (c) is a misdemeanor. A knowing violation of paragraph (1), (2), (3), (4), or (5) of subdivision (c) in furtherance of another crime is subject to the same penalties as that other crime.

(e) This section shall become operative on January 1, 2007.

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 650

An act to amend Sections 221.5, 37631, 41840, 48980, and 51851 of, to add Chapter 5.6 (commencing with Section 51930) to Part 28 of, to repeal Sections 51201.5, 51229, 51229.5, 51229.8, and 51240 of, to repeal Article 6 (commencing with Section 51550) of Chapter 4 of Part

28 of, and to repeal Article 11 (commencing with Section 51820) of Chapter 5 of Part 28 of, the Education Code, relating to instruction.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 221.5 of the Education Code is amended to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) A school district may not prohibit a pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Chapter 5.6 (commencing with Section 51930) of Part 28.

(c) A school district may not require a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex.

(d) A school counselor, teacher, instructor, administrator, or aide may not, on the basis of the sex of a pupil, offer vocational or school program guidance to a pupil of one sex that is different from that offered to a pupil of the opposite sex or, in counseling a pupil, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to a pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 2. Section 37631 of the Education Code is amended to read:

37631. The courses of instruction offered at a school maintained pursuant to this chapter shall meet all applicable requirements of law, including the requirements prescribed by Chapter 2 (commencing with Section 51200) of Part 28 relating to physical education and Chapter 5.6 (commencing with Section 51930) of Part 28. For these purposes the instructional program shall be designed to provide at least the overall equivalent in instruction in each course of study required by law to be provided in kindergarten and grades 1 to 12, inclusive, upon the completion by a pupil of the work prescribed for any particular grade.

SEC. 3. Section 41840 of the Education Code is amended to read:

41840. A school district or county superintendent of schools may only claim average daily attendance for apportionment purposes for schools or classes maintained for adults in correctional facilities if those classes meet the requirements of Section 41976. In addition, any of those classes offered pursuant to paragraph (10) of subdivision (a) of Section 41976 shall meet the requirements of Section 51934, 51202, or 51203, as the case may be.

SEC. 4. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(e) Commencing with the 2000–01 school year, and each school year thereafter, the notification shall advise the parent or guardian of the pupil that, commencing with the 2003–04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to Chapter 8 (commencing with Section 60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) The notification shall include a copy of the written policy of the school district adopted pursuant to Section 51870.5 regarding access by pupils to Internet and online sites.

(i) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the existing statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The department shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(*l*) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

SEC. 4.5. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014,

48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options, including, but not limited to, United States savings bonds.

(e) Commencing with the 2000–01 school year, and each school year thereafter, the notification shall advise the parent or guardian of the pupil that, commencing with the 2003–04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to Chapter 8 (commencing with Section 60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) The notification shall include a copy of the written policy of the school district adopted pursuant to Section 51870.5 regarding access by pupils to Internet and online sites.

(i) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description

of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the existing statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The department shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(*l*) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

SEC. 5. Section 51201.5 of the Education Code is repealed.

SEC. 6. Section 51229 of the Education Code is repealed.

SEC. 7. Section 51229.5 of the Education Code is repealed.

SEC. 8. Section 51229.8 of the Education Code is repealed.

SEC. 9. Section 51240 of the Education Code is repealed.

SEC. 10. Article 6 (commencing with Section 51550) of Chapter 4 of Part 28 of the Education Code is repealed.

SEC. 11. Article 11 (commencing with Section 51820) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 12. Section 51851 of the Education Code is amended to read:

51851. A course of instruction in automobile driver education shall meet all of the following:

(a) Be of at least $2^1/_2$ semester periods and shall be taught by a qualified instructor.

(b) Provide the opportunity for pupils to take driver education within the regular schoolday, and within the regular academic year, as defined in Section 37250. Additional classes may be offered at the discretion of the local school district governing board, the county superintendent of schools, California Youth Authority, and the State Department of

Education, to accommodate the pupils who have failed or who cannot otherwise enroll in the regular schoolday program. For purposes of this section, the regular schoolday shall be that time during which classes are maintained in the courses of instruction provided for in Chapter 1 (commencing with Section 51000), Chapter 2 (commencing with Section 51200), Article 1 (commencing with Section 51500), Article 2 (commencing with Section 51510), Article 3 (commencing with Section 51520), and Article 4 (commencing with Section 51530) of Chapter 4, and Chapter 5.6 (commencing with Section 51930) of this part, and Chapter 2 (commencing with Section 58400) of Part 31.

(c) Be completed by the pupil within the academic year or summer session in which it was begun.

SEC. 13. Chapter 5.6 (commencing with Section 51930) is added to Part 28 of the Education Code, to read:

CHAPTER 5.6. CALIFORNIA COMPREHENSIVE SEXUAL HEALTH AND HIV/AIDS PREVENTION EDUCATION ACT

Article 1. General Provisions

51930. (a) This chapter shall be known and may be cited as the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.

(b) The purposes of this chapter are as follows:

(1) To provide a pupil with the knowledge and skills necessary to protect his or her sexual and reproductive health from unintended pregnancy and sexually transmitted diseases.

(2) To encourage a pupil to develop healthy attitudes concerning adolescent growth and development, body image, gender roles, sexual orientation, dating, marriage, and family.

51931. For the purposes of this chapter, the following definitions apply:

(a) ''Age appropriate'' refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) ''Comprehensive sexual health education'' means education regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases.

(c) ''English learner'' means a pupil as described in subdivision (a) of Section 306.

(d) ''HIV/AIDS prevention education'' means instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of human immunodeficiency virus (HIV) infection, and social and

public health issues related to HIV/AIDS. For the purposes of this chapter, ''HIV/AIDS prevention education'' is not comprehensive sexual health education.

(e) ''Instructors trained in the appropriate courses'' means instructors with knowledge of the most recent medically accurate research on human sexuality, pregnancy, and sexually transmitted diseases.

(f) ''Medically accurate'' means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

(g) ''School district'' includes county boards of education, county superintendents of schools, the California School for the Deaf, and the California School for the Blind.

51932. (a) This chapter does not apply to description or illustration of human reproductive organs that may appear in a textbook, adopted pursuant to law, on physiology, biology, zoology, general science, personal hygiene, or health.

(b) This chapter does not apply to instruction or materials that discuss gender, sexual orientation, or family life and do not discuss human reproductive organs and their functions.

Article 2. Authorized Comprehensive Sexual Health Education

51933. (a) School districts may provide comprehensive sexual health education, consisting of age-appropriate instruction, in any kindergarten to grade 12, inclusive, using instructors trained in the appropriate courses.

(b) A school district that elects to offer comprehensive sexual health education pursuant to subdivision (a), whether taught by school district personnel or outside consultants, shall satisfy all of the following criteria:

(1) Instruction and materials shall be age appropriate.

(2) All factual information presented shall be medically accurate and objective.

(3) Instruction shall be made available on an equal basis to a pupil who is an English learner, consistent with the existing curriculum and alternative options for an English learner pupil as otherwise provided in this code.

(4) Instruction and materials shall be appropriate for use with pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds, and pupils with disabilities.

(5) Instruction and materials shall be accessible to pupils with disabilities, including, but not limited to, the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.

(6) Instruction and materials shall encourage a pupil to communicate with his or her parents or guardians about human sexuality.

(7) Instruction and materials shall teach respect for marriage and committed relationships.

(8) Commencing in grade 7, instruction and materials shall teach that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy, teach that abstinence from sexual activity is the only certain way to prevent sexually transmitted diseases, and provide information about the value of abstinence while also providing medically accurate information on other methods of preventing pregnancy and sexually transmitted diseases.

(9) Commencing in grade 7, instruction and materials shall provide information about sexually transmitted diseases. This instruction shall include how sexually transmitted diseases are and are not transmitted, the effectiveness and safety of all federal Food and Drug Administration (FDA) approved methods of reducing the risk of contracting sexually transmitted diseases, and information on local resources for testing and medical care for sexually transmitted diseases.

(10) Commencing in grade 7, instruction and materials shall provide information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception.

(11) Commencing in grade 7, instruction and materials shall provide pupils with skills for making and implementing responsible decisions about sexuality.

(12) Commencing in grade 7, instruction and materials shall provide pupils with information on the law on surrendering physical custody of a minor child 72 hours or younger, pursuant to Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code.

(c) A school district that elects to offer comprehensive sexual health education pursuant to subdivision (a) earlier than grade 7 may provide age appropriate and medically accurate information on any of the general topics contained in paragraphs (8) to (12), inclusive, of subdivision (b).

(d) If a school district elects to offer comprehensive sexual health education pursuant to subdivision (a), whether taught by school district personnel or outside consultants, the school district shall comply with the following:

(1) Instruction and materials may not teach or promote religious doctrine.

(2) Instruction and materials may not reflect or promote bias against any person on the basis of any category protected by Section 220.

Article 3. Required HIV/AIDS Prevention Education

51934. (a) A school district shall ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school.

(b) HIV/AIDS prevention education, whether taught by school district personnel or outside consultants, shall satisfy all of the criteria set forth in paragraphs (1) to (6), inclusive, of subdivision (b) and paragraphs (1) and (2) of subdivision (d) of Section 51933, shall accurately reflect the latest information and recommendations from the United States Surgeon General, the federal Centers for Disease Control and Prevention, and the National Academy of Sciences, and shall include the following:

(1) Information on the nature of HIV/AIDS and its effects on the human body.

(2) Information on the manner in which HIV is and is not transmitted, including information on activities that present the highest risk of HIV infection.

(3) Discussion of methods to reduce the risk of HIV infection. This instruction shall emphasize that sexual abstinence, monogamy, the avoidance of multiple sexual partners, and abstinence from intravenous drug use are the most effective means for HIV/AIDS prevention, but shall also include statistics based upon the latest medical information citing the success and failure rates of condoms and other contraceptives in preventing sexually transmitted HIV infection, as well as information on other methods that may reduce the risk of HIV transmission from intravenous drug use.

(4) Discussion of the public health issues associated with HIV/AIDS.

(5) Information on local resources for HIV testing and medical care.

(6) Development of refusal skills to assist pupils in overcoming peer pressure and using effective decisionmaking skills to avoid high-risk activities.

(7) Discussion about societal views on HIV/AIDS, including stereotypes and myths regarding persons with HIV/AIDS. This instruction shall emphasize compassion for persons living with HIV/AIDS.

Article 4. In-Service Training

51935. (a) A school district shall cooperatively plan and conduct in-service training for all school district personnel that provide HIV/AIDS prevention education, through regional planning, joint powers agreements, or contract services.

(b) In developing and providing in-service training, a school district shall cooperate and collaborate with the teachers of the district who provide HIV/AIDS prevention education and with the State Department of Education.

(c) In-service training shall be conducted periodically to enable school district personnel to learn new developments in the scientific understanding of HIV/AIDS. In-service training shall be voluntary for school district personnel who have demonstrated expertise or received in-service training from the State Department of Education or federal Centers for Disease Control and Prevention.

(d) A school district may expand HIV/AIDS in-service training to cover the topic of comprehensive sexual health education in order for school district personnel who provide comprehensive sexual health education to learn new developments in the scientific understanding of sexual health.

51936. School districts may contract with outside consultants with expertise in comprehensive sexual health education or HIV/AIDS prevention education, or both, including those who have developed multilingual curricula or curricula accessible to persons with disabilities, to deliver the instruction or to provide training for school district personnel.

Article 5. Notice and Parental Excuse

51937. It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV/AIDS and to respect the rights of parents or guardians to supervise their children's education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.

51938. A parent or guardian of a pupil has the right to excuse their child from all or part of comprehensive sexual health education,

HIV/AIDS prevention education, and assessments related to that education, as follows:

(a) At the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, each school district shall notify the parent or guardian of each pupil about instruction in comprehensive sexual health education and HIV/AIDS prevention education and research on pupil health behaviors and risks planned for the coming year. The notice shall include all of the following:

(1) Advise the parent or guardian that written and audio visual educational materials used in comprehensive sexual health education and HIV/AIDS prevention education are available for inspection.

(2) Advise the parent or guardian whether the comprehensive sexual health education or HIV/AIDS prevention education will be taught by school district personnel or by outside consultants.

(3) Information explaining the parent's or guardian's right to request a copy of this chapter.

(4) Advise the parent or guardian that the parent or guardian may request in writing that his or her child not receive comprehensive sexual health education or HIV/AIDS prevention education.

(b) Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age appropriate questions about the pupil's attitudes concerning or practices relating to sex may be administered to any pupil in grades 7 to 12, inclusive, if the parent or guardian is notified in writing that this test, questionnaire, or survey is to be administered and the pupil's parent or guardian is given the opportunity to review the test, questionnaire, or survey and to request in writing that his or her child not participate.

51939. (a) A pupil may not attend any class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

(b) A pupil may not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive comprehensive sexual health education or HIV/AIDS prevention education or to participate in anonymous, voluntary, and confidential tests, questionnaires, or surveys on pupil health behaviors and risks.

(c) While comprehensive sexual health education, HIV/AIDS prevention education, or anonymous, voluntary, and confidential test,

questionnaire, or survey on pupil health behaviors and risks is being administered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction or participate in the test, questionnaire, or survey.

SEC. 14. Section 4.5 of this bill incorporates amendments to Section 48980 of the Education Code proposed by this bill and AB 300. 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 48980 of the Education Code, and (3) this bill is enacted after AB 300, in which case Section 48980 of the Education Code, as amended by AB 300, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

CHAPTER 651

An act to amend Section 4052 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the

supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) (A) Furnish emergency contraception drug therapy in accordance with either of the following:

(i) Standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.

(ii) Standardized procedures or protocols developed and approved by both the board and the Medical Board of California in consultation with the American College of Obstetricians and Gynecologists, the California Pharmacist Association, and other appropriate entities. Both the board and the Medical Board of California shall have authority to ensure compliance with this clause, and both boards are specifically charged with the enforcement of this provision with respect to their respective licensees. Nothing in this clause shall be construed to expand the authority of a pharmacist to prescribe any prescription medication.

(B) Prior to performing a procedure authorized under this paragraph, a pharmacist shall complete a training program on emergency contraception consisting of at least one hour of approved continuing education on emergency contraception drug therapy.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully

completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 1.5. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who

contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written,

patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) (A) Furnish emergency contraception drug therapy in accordance with either of the following:

(i) Standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.

(ii) Standardized procedures or protocols developed and approved by both the board and the Medical Board of California in consultation with the American College of Obstetricians and Gynecologists, the California Pharmacist Association, and other appropriate entities. Both the board and the Medical Board of California shall have authority to ensure compliance with this clause, and both boards are specifically charged with the enforcement of this provision with respect to their respective licensees. Nothing in this clause shall be construed to expand the authority of a pharmacist to prescribe any prescription medication.

(B) Prior to performing a procedure authorized under this paragraph, a pharmacist shall complete a training program on emergency contraception that consists of at least one hour of approved continuing education on emergency contraception drug therapy.

(C) A pharmacist, pharmacist's employer, or pharmacist's agent may not directly charge a patient a separate consultation fee for emergency contraception drug therapy services initiated pursuant to this paragraph, but may charge an administrative fee not to exceed ten dollars ($10) above the retail cost of the drug. Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total retail price that a consumer would pay for emergency contraception drug therapy. As used in this subparagraph, total retail price includes providing the consumer with specific information regarding the price of the emergency contraception drugs and the price of the administrative fee charged. This limitation is not intended to interfere with other contractually agreed-upon terms between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health care service plan or insurer. Patients who are insured or covered and receive a pharmacy benefit that covers the cost of emergency contraception shall not be required to pay an administrative

fee. These patients shall be required to pay copayments pursuant to the terms and conditions of their coverage. The provisions of this subparagraph shall cease to be operative for dedicated emergency contraception drugs when these drugs are reclassified as over-the-counter products by the federal Food and Drug Administration.

(D) A pharmacist may not require a patient to provide individually identifiable medical information that is not specified in Section 1707.1 of Title 16 of the California Code of Regulations before initiating emergency contraception drug therapy pursuant to this paragraph.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 4052 of the Business and Professions Code proposed by both this bill and SB 545. 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 4052 of the Business and Profession Code, and (3) this bill is enacted after SB 545, in which case Section 1 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 652

An act to amend Section 4052 of, and to add Section 682 to, the Business and Professions Code, relating to pharmacists.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. It is the intent of the Legislature to ensure equality of access to pharmaceuticals for the women of California. In ensuring that access, the Legislature intends to eliminate barriers relating to women obtaining emergency contraception.

SEC. 2. Section 682 is added to the Business and Professions Code, to read:

682. An individual authorized to prescribe emergency contraception who issues a prescription or order for emergency contraception drug therapy as a result of a patient contact by telephone or electronic means may not charge an administrative fee or fees totaling more than ten dollars ($10) for emergency contraception drug therapy services. This limitation is not intended to interfere with other contractually agreed-upon terms between an individual prescriber and a health care service plan, insurer, or disability insurer for payment directly to the prescriber by the plan or insurer.

SEC. 3. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) Furnish emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice, subject to the following requirements:

(A) Prior to performing any procedure authorized under this paragraph, a pharmacist shall have completed a training program on emergency contraception that consists of at least one hour of approved continuing education on emergency contraception drug therapy.

(B) A pharmacist, pharmacist's employer, or pharmacist's agent may not directly charge a patient a separate consultation fee for emergency contraception drug therapy services initiated pursuant to this paragraph, but may charge an administrative fee not to exceed ten dollars ($10) above the retail cost of the drug. Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total retail price that a consumer would pay for emergency contraception drug therapy. As used in this subparagraph, total retail price includes providing the consumer with specific information regarding the price of the emergency contraception drugs and the price of the administrative fee charged. This limitation is not intended to interfere with other contractually agreed-upon terms

between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health care service plan or insurer. Patients who are covered or insured and receive a pharmacy benefit that covers the cost of emergency contraception shall not be required to pay an administrative fee. These patients shall be required to pay copayments pursuant to the terms and conditions of their coverage. The provisions of this subparagraph shall cease to be operative for dedicated emergency contraception drugs when these drugs are reclassified as over-the-counter products by the federal Food and Drug Administration.

(C) A pharmacist may not require a patient to provide individually identifiable medical information that is not specified in Section 1707.1 of Title 16 of the California Code of Regulations before initiating emergency contraception drug therapy pursuant to this paragraph.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 3.5. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) (A) Furnish emergency contraception drug therapy in accordance with either of the following:

(i) Standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.

(ii) Standardized procedures or protocols developed and approved by both the board and the Medical Board of California in consultation with the American College of Obstetricians and Gynecologists, the California Pharmacist Association, and other appropriate entities. Both the board and the Medical Board of California shall have authority to ensure compliance with this clause, and both boards are specifically charged with the enforcement of this provision with respect to their respective licensees. Nothing in this clause shall be construed to expand the authority of a pharmacist to prescribe any prescription medication.

(B) Prior to performing a procedure authorized under this paragraph, a pharmacist shall complete a training program on emergency contraception that consists of at least one hour of approved continuing education on emergency contraception drug therapy.

(C) A pharmacist, pharmacist's employer, or pharmacist's agent may not directly charge a patient separate consultation fee for emergency contraception drug therapy services initiated pursuant to this paragraph, but may charge an administrative fee not to exceed ten dollars ($10) above the retail cost of the drug. Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total retail price that a consumer would pay for emergency contraception drug therapy. As used in this subparagraph, total retail price includes providing the consumer with specific information regarding the price of the emergency contraception drugs and the price of the administrative fee charged. This limitation is not intended to interfere with other contractually agreed-upon terms between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health care service plan or insurer. Patients who are insured or covered and receive a pharmacy benefit that covers the cost of emergency contraception shall not be required to pay an administrative fee. These patients shall be required to pay copayments pursuant to the terms and conditions of their coverage. The provisions of this subparagraph shall cease to be operative for dedicated emergency contraception drugs when these drugs are reclassified as over-the-counter products by the federal Food and Drug Administration.

(D) A pharmacist may not require a patient to provide individually identifiable medical information that is not specified in Section 1707.1 of Title 16 of the California Code of Regulations before initiating emergency contraception drug therapy pursuant to this paragraph.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services,

the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 4052 of the Business and Professions Code proposed by both this bill and SB 490. 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 4052 of the Business and Professions Code, and (3) this bill is enacted after SB 490, in which case Section 3 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 653

An act to amend Section 51226.1 of the Education Code, relating to school curriculum.

[Approved by Governor October 1, 2003. Filed with Secretary of State October 1, 2003.]

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

SECTION 1. The Legislature finds and declares that career technical education courses may offer instruction that would satisfy the requirements of other required courses of study, including science and mathematics. A review of career technical education, as aligned with state standards, will help districts identify career technical coursework that satisfies those other areas.

SEC. 2. Section 51226.1 of the Education Code is amended to read:

51226.1. (a) Upon adoption of the model curriculum standards developed pursuant to Section 51226, the Superintendent of Public

Instruction shall develop a curriculum framework consistent with criteria set forth in subdivision (a) of Section 60005 that offers a blueprint for implementation of career and technical education. The framework shall be adopted no later than June 1, 2006.

(b) In developing the framework, the superintendent shall work in consultation and coordination with an advisory group, including, but not limited to, representatives from all of the following:

(1) Business and industry.
(2) Labor.
(3) The California Community Colleges.
(4) The University of California.
(5) The California State University.
(6) Classroom teachers.
(7) School administrators.
(8) Pupils.
(9) Parents and guardians.
(10) Representatives of the Legislature.
(11) The State Department of Education.
(12) The Labor and Workforce Development Agency.

(c) In convening the membership of the advisory group set forth in subdivision (b), the superintendent is encouraged to seek representation broadly reflective of the state population.

(d) Costs incurred by the superintendent in complying with this section shall be covered, to the extent permitted by federal law, by the state administrative and leadership funds available pursuant to the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. Sec. 2301).

(e) In developing the framework, the superintendent shall consider developing frameworks for various career pathways that will prepare pupils for both career entry and matriculation into postsecondary education.

(f) Upon completion of the framework, the advisory group is encouraged to identify career technical education courses that meet state-adopted academic content standards and that satisfy high school graduation requirements and admissions requirements of the University of California and the California State University, and to determine the extent to which local educational agencies accept credit earned for the completion of those courses, in lieu of other courses of study.

(g) The adoption of the framework developed and adopted pursuant to this section by a local educational agency shall be voluntary.

CHAPTER 654

An act to amend Sections 18628, 19116, 19164, 19166, 19173, 19177, 19179, 19504, 19715, and 21028 of, to add Section 18407 to, to add Chapter 9.5 (commencing with Section 19751) to Part 10.2 of, and to repeal and add Section 18648 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 2, 2003.]

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

SECTION 1. Section 18407 is added to the Revenue and Taxation Code, to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase ''any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part,'' shall be substituted for the phrase ''when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title,'' contained therein.

(2) ''Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board'' shall be substituted for ''Secretary.''

(3) To additionally provide that ''reportable transaction'' includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that ''listed transaction'' includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish ''listed transactions'' (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the ''listed transactions'' identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) 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 standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of DISCS and former DISCS and FSC's and former FSC's, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. 2. Section 18628 of the Revenue and Taxation Code is amended to read:

18628. (a) Section 6111 of the Internal Revenue Code, relating to registration of tax shelters, applies, except as otherwise provided.

(b) (1) Except as provided in subdivision (g), a tax shelter organizer is required to send a duplicate of the federal registration information, if applicable, or the same information required for federal tax shelters for California tax shelters to the Franchise Tax Board not later than the day on which the first offering for sale of interests in that tax shelter occurs.

(2) (A) The information provided to the Franchise Tax Board pursuant to paragraph (1) shall also include any other information required by a Franchise Tax Board Notice.

(B) 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 additional information requested under this section.

(c) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(d) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, applies.

(e) Section 6111(c)(2)(A) of the Internal Revenue Code is amended by substituting the phrase ''under subtitle A of the Internal Revenue Code or under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of the Revenue and Taxation Code'' for ''under subtitle A.''

(f) (1) Section 6111(d) of the Internal Revenue Code is modified to further provide that, for purposes of this section and Section 18648, the term ''tax shelter'' includes any listed transaction (as defined under subdivision (a) of Section 18407).

(2) Section 6111(d)(1)(A) of the Internal Revenue Code is amended by substituting the phrase ''avoidance or evasion of federal income tax or California income or franchise tax'' for ''avoidance or evasion of Federal income tax.''

(g) The registration requirements of this section apply to any tax shelter (within the meaning of Section 6111 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

(1) Organized in this state.

(2) Doing business in this state.

(3) Deriving income from sources in this state.

(4) At least one of its investors is a California taxpayer.

(h) In addition to the requirements set forth in subdivision (a), for any transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Code) at any time, those transactions shall be required to be registered with the Franchise Tax Board by the later of:

(1) Sixty days after entering into the transaction.

(2) Sixty days after the transaction becomes a listed transaction, or

(i) In addition to the requirements set forth in subdivisions (a) and (h), for any transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a ''listed transaction'' at any time those transactions shall be required to be registered with the Franchise Tax Board by the later of:

(1) Sixty days after entering into the transaction.
(2) Sixty days after the transaction becomes a listed transaction.
(3) April 30, 2004.
(3) April 30, 2004.

SEC. 3. Section 18648 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 18648 is added to the Revenue and Taxation Code, to read:

18648. (a) Section 6112 of the Internal Revenue Code, relating to organizers and sellers of potentially abusive tax shelters that must keep lists of investors, applies, except as otherwise provided.

(b) Section 6112 of the Internal Revenue Code is modified by substituting the phrase ''Secretary or the Franchise Tax Board'' for the word ''Secretary'' each place it appears.

(c) The requirement to maintain lists under this section shall apply to any organizer, seller, or material advisor of a potentially abusive tax shelter (within the meaning of Section 6112 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

(1) Organized in this state.
(2) Doing business in this state.
(3) Deriving income from sources in this state.
(4) At least one of its investors is a California taxpayer.

(d) (1) Notwithstanding any regulation issued under Section 6112 of the Internal Revenue Code, the list required to be maintained by this section for listed transactions, as defined in subdivision (a) Section 18407, shall be maintained in the form and manner prescribed by the Franchise Tax Board.

(2) 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 requirement prescribed by the Franchise Tax Board under this section.

(3) For transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Service at any time, the lists shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.
(B) Sixty days after the transaction becomes a listed transaction; or
(C) April 30, 2004.

(4) For transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board of California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a ''listed transaction'' at any time, the list shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(C) April 30, 2004.

(e) The terms ''organizer,'' ''seller,'' and ''material advisor'' mean a person that meets any of the requirements of this section or Section 6112 of the Internal Revenue Code or regulations issued thereunder.

SEC. 5. Section 19116 of the Revenue and Taxation Code is amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), ''notification period'' means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) ''Suspension period'' means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars ($200,000) that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777).

(g) This section shall apply to taxable years ending after October 10, 1999.

SEC. 6. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty, except as otherwise provided.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an S corporation, that has been contacted by the Franchise Tax Board regarding the use of

a potentially abusive tax shelter (within the meaning of Section 19777), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars ($2,500)), or

(B) Five million dollars ($5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19773 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6662(d)(2)(B)(i) of the Internal Revenue Code is modified to substitute the phrase ''the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment'' for the phrase ''the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment'' contained therein.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code (as modified by subdivision (d)), Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the ''listed transactions'' identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board. This subdivision applies only to the list of positions relating to abusive tax shelters, within the meaning of Section 19777.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6664 of the Internal Revenue Code is modified to additionally provide that no penalty shall be imposed under Section 19773 with respect to any portion of a reportable

transaction understatement if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith with respect to that portion.

(2) Paragraph (1) does not apply to any reportable transaction understatement unless all of the following requirements are met:

(A) (i) The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under Section 6011 of the Internal Revenue Code, as modified by Section 18407.

(ii) A taxpayer failing to adequately disclose in accordance with Section 6011 of the Internal Revenue Code, as modified by Section 18407, shall be treated as meeting the requirements of this subparagraph, if the penalty for that failure was rescinded under subdivision (e) of Section 19772.

(iii) For taxable years beginning on or before January 1, 2003, ''adequately disclosed'' includes the disclosure of the tax shelter identification number on the taxpayer's return, as required by subdivision (c) of Section 18628.

(B) There is or was substantial authority for that treatment.

(C) The taxpayer reasonably believed that that treatment was more likely than not the proper treatment.

(3) For purposes of subparagraph (C) of paragraph (2) all of the following shall apply:

(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if that belief meets both of the following requirements:

(i) Is based on the facts and law that exist at the time the return of tax that includes that tax treatment is filed.

(ii) Relates solely to the taxpayer's chances of success on the merits of that treatment and does not take into account the possibility that the return will not be audited, that the treatment will not be raised on audit, or that the treatment will be resolved through settlement if it is raised.

(B) (i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if either of the following conditions are met:

(I) The tax advisor is described in clause (ii).

(II) The opinion is described in clause (iii).

(ii) A tax advisor is described in this clause if the tax advisor meets any of the following conditions:

(I) Is a material advisor (within the meaning of subdivision (d) of Section 18648) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of Sections 267(b) or 707(b)(1) of the Internal Revenue Code) to any person who so participates.

(II) Is compensated directly or indirectly by a material advisor with respect to the transaction.

(III) Has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained.

(IV) As determined under regulations prescribed by either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board, has a continuing financial interest with respect to the transaction.

(iii) For purposes of clause (i), an opinion is disqualified if the opinion meets any of the following conditions:

(I) Is based on unreasonable, factual, or legal assumptions (including assumptions as to future events).

(II) Unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person.

(III) Does not identify and consider all relevant facts.

(IV) Fails to meet any other requirement as either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board may by forms and instructions prescribe.

(e) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(f) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 461(i)(3)(C) of the Internal Revenue Code is modified by substituting a reference to ''Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164'' instead of the reference to ''Section 6662(d)(2)(C)(iii)'' contained therein.

(g) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 1274(b)(3)(B)(i) of the Internal Revenue Code is modified to provide that for purposes of Section 1274(b)(3)(B) of the Internal Revenue Code, the term ''tax shelter'' means (1) a partnership or other entity, (2) any investment plan or arrangement, or (3) any other plan or arrangement, if a significant purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 7. Section 19166 of the Revenue and Taxation Code is amended to read:

19166. A penalty shall be imposed for understatement of any taxpayer's liability by a tax return preparer. The penalty shall be

determined in accordance with Section 6694 of the Internal Revenue Code, except as otherwise provided.

(a) (1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6694(a) of the Internal Revenue Code is modified to substitute ''one thousand dollars ($1,000)'' for ''two hundred fifty dollars ($250).''

(2) Section 6694(a)(1) of the Internal Revenue Code is modified to substitute the phrase ''reasonable belief that the tax treatment in that position was more likely than not the proper treatment'' instead of the phrase ''realistic possibility of being sustained on its merits'' contained therein.

(3) Section 6694(a)(3) of the Internal Revenue Code is modified to substitute the phrase ''or there was no reasonable basis for the tax treatment of that position'' instead of the phrase ''or was frivolous'' contained therein.

(b) Section 6694(b) of the Internal Revenue Code is modified to substitute ''$5,000'' for ''$1,000.''

(c) Section 6694(c) of the Internal Revenue Code shall not apply and, in lieu thereof, the following shall apply:

(1) If, within 30 days after the day on which notice and demand of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is made against any person who is an income tax return preparer, that person pays an amount which is not less than 15 percent of the amount of that penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of that penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding Section 19381, the beginning of that proceeding or levy during the time that prohibition is in force may be enjoined in a proceeding in the superior court.

(2) If, within 30 days after the day on which a claim for refund of any partial payment of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is denied (or, if earlier, within 30 days after the expiration of six months after the day on which the claim for refund has been filed), the income tax return preparer fails to begin a proceeding in the superior court for the determination of his or her liability for that penalty, paragraph (1) shall cease to apply with respect to that penalty, effective on the day following the close of the applicable 30-day period referred to in this subdivision.

(3) The running of the period of limitations provided in Section 19371 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period

during which the Franchise Tax Board is prohibited from collecting by levy or a proceeding in court.

SEC. 8. Section 19173 of the Revenue and Taxation Code is amended to read:

19173. (a) (1) Any person required to register under Section 18628 or maintain and provide a list under Section 18648, for any calendar year, is liable for a penalty as determined under subdivision (b) if that person does any of the following:

(A) (i) Fails to register under Section 18628 on or before the date prescribed therefor.

(ii) For reportable transactions (as defined under Section 18407), fails to furnish the list within 20 days of a request.

(iii) For listed transactions, fails to provide the list on or before the date prescribed therefor in Section 18648.

(B) Registers a tax shelter or provides a list which fails to show the information required under Section 18628 or Section 18648.

(C) Fails to furnish the required statement to each investor.

(2) Paragraph (1) of this subdivision does not apply if it is shown that subdivision (d) applies or that the information required under paragraph (2) of subdivision (b) of Section 18628 was not identified in a Franchise Tax Board Notice issued prior to the date the transaction or shelter was entered into.

(b) (1) (A) For purposes of subdivision (a), the amount determined under this subdivision for a tax shelter required to be registered under Section 18628 is, except as provided in subparagraph (B), fifteen thousand dollars ($15,000).

(B) If the penalty is with respect to a listed transaction (as defined under Section 18407), the amount determined under this subdivision for a tax shelter required to be registered under Section 18628 shall be the greater of:

(i) One hundred thousand dollars ($100,000).

(ii) Fifty percent of the gross income that the organizer or material advisor derived from that activity.

(C) In the case of intentional disregard by an organizer or material advisor of the requirement to maintain and provide information regarding a listed transaction (as defined under Section 18407) the percentage of gross income under clause (ii) of subparagraph (B) is ''75 percent'' instead of ''50 percent.''

(2) For purposes of subdivision (a), the amount determined under this subdivision for the failure to provide a list required to be maintained under Section 18648 is as follows:

(A) For reportable transactions, the penalty amount shall be ten thousand dollars ($10,000) for each day after the 20th day that the organizer or material advisor has failed to make the list available to the

Franchise Tax Board after written request for that list was made by the Franchise Tax Board.

(B) For listed transactions, the penalty amount shall be determined under subparagraph (B) of paragraph (1).

(c) The penalty imposed by subdivision (a) shall be assessed against the person required to file a copy of the federal registration or required to register under Section 18628, or the person required to maintain or provide a list under Section 18648. The penalty may be assessed at any time during the period ending eight years after the failure has occurred.

(d) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by subdivision (a) with respect to any violation with respect to a tax shelter required to be registered under Section 18628, or a list required to be maintained or provided under Section 18648, if all of the following apply:

(A) The violation is with respect to a reportable transaction, other than a listed transaction (as defined under subdivision (a) of Section 18407).

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(e) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(f) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 9. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. (a) A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the

provisions of Section 6700 of the Internal Revenue Code, except as otherwise provided.

(b) Notwithstanding Section 6700(a) of the Internal Revenue Code, if an activity with respect to which a penalty imposed under Section 6700(a) of the Internal Revenue Code involves a statement described in Section 6700(a)(2)(A) of the Internal Revenue Code, the amount of the penalty imposed under subdivision (a) shall be equal to 50 percent of the gross income derived (or to be derived) from that activity by the person on which the penalty is imposed.

SEC. 10. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty shall be imposed for filing a frivolous return. The penalty shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) Section 6702 of the Internal Revenue Code shall be applied to returns required to be filed under this part.

(b) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6702(a) of the Internal Revenue Code is modified as follows:

(1) By substituting ''$5,000'' instead of ''$500.''

(2) By substituting the phrase ''person'' instead of the phrase ''individual'' in each place that it appears.

(3) By substituting ''tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part'' instead of the phrase ''tax imposed by subtitle A'' contained therein.

(4) By substituting the phrase ''is based on'' instead of the phrase ''is due to'' contained therein.

(5) By substituting the phrase ''frivolous or is based on a position that the Franchise Tax Board has identified as frivolous under subdivision (c) of Section 19179'' instead of the phrase ''frivolous'' contained therein.

(6) By substituting the phrase ''reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part as determined by the Franchise Tax Board'' instead of the phrase ''a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws'' contained therein.

(c) (1) The Franchise Tax Board shall prescribe (and periodically revise) a list of positions which the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board has identified as being frivolous for purposes of this section.

(2) 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 standard, criterion, procedure, determination, rule, notice, or guideline established or prescribed by the Franchise Tax Board pursuant to paragraph (1).

(d) (1) Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars ($5,000).

(2) For purposes of this section, all of the following shall apply:

(A) The term ''specified frivolous submission'' means a specified submission if any portion of that submission meets any of the following conditions:

(i) Is based on a position which the Franchise Tax Board has identified as frivolous under subdivision (c).

(ii) Reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part as determined by the Franchise Tax Board.

(B) The term ''specified submission'' means any of the following:

(i) A protest under Section 19041.

(ii) A request for a hearing under Section 19044.

(iii) An application under any of the following sections:

(I) Section 19008 (relating to agreements for payment of tax liability in installments).

(II) Section 19443 (relating to compromises).

(III) Section 21004 (relating to actions of the Taxpayer Right's Advocate).

(3) If the Franchise Tax Board provides a person with notice that a submission is a specified frivolous submission and the person withdraws that submission within 30 days after the notice, the penalty imposed under paragraph (1) does not apply with respect to that submission.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section if both of the following apply:

(A) Imposing the penalty would be against equity and good conscience.

(B) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) The penalties imposed by this section shall be in addition to any other penalty provided by law.

SEC. 11. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the

superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

SEC. 12. Section 19715 of the Revenue and Taxation Code is amended to read:

19715. (a) A civil action in the name of the State of California to enjoin any person from further engaging in specified conduct may be commenced at the request of the Franchise Tax Board. Any action under this section shall be brought in accordance with Section 19707. The court may exercise its jurisdiction over that action separate and apart from any other action brought by the State of California against that person.

(b) In any action under subdivision (a), the court may enjoin the person from engaging in the specified conduct or in any other activity subject to penalty under this part, if the court finds both of the following:

(1) That the person has engaged in any specified conduct.

(2) That injunctive relief is appropriate to prevent recurrence of that specified conduct.

(c) For purposes of this section, the term ''specified conduct'' means any action, or failure to take action, subject to penalty under Section 19173, 19174, 19177, or 19178.

SEC. 13. Chapter 9.5 (commencing with Section 19751) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 9.5. TAX SHELTERS

19751. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

(b) The voluntary compliance initiative shall be conducted during the period from January 1, 2004, to April 15, 2004, inclusive, pursuant to Section 19754. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions for taxable years beginning before January 1, 2003.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this chapter.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this chapter.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this chapter constitutes ''contact'' within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and paragraph (3) of subdivision (e) of Section 19773 and Section 19777, regarding increased interest rate.

19752. Any taxpayer who meets the requirements of Section 19754 may elect the application of either, but not both, of the following:

(a) Voluntary compliance without appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this chapter.

(3) No penalty may be waived or abated under this chapter if the penalty imposed is attributable to an assessment of taxes that became final prior to December 31, 2003.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, the taxpayer may not file a claim for refund for the amounts paid in connection with abusive tax avoidance transactions under this chapter.

(b) Voluntary compliance with appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties, except the accuracy-related penalty under Section 19164 (as in effect immediately before enactment of the act adding this section), imposed by this part, for each of the taxable years for which the taxpayer elects to participate in the initiative, that are owed as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action may be brought against the taxpayer for each of the taxable years for which the taxpayer voluntarily complies under this section.

(3) No penalty may be waived under this chapter if the penalty imposed is attributable to an assessment of taxes that became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this chapter applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this chapter applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy-related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this chapter. A separate election for each taxable year governed by this chapter is not allowed.

19753. (a) This chapter does not apply to violations of this part for which, as of December 31, 2003, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction or transactions.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction or transactions.

(b) No refund or credit shall be granted with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this chapter.

(c) For purposes of this chapter, an ''abusive tax avoidance transaction'' means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, ''listed transactions'' as described in subdivision (a) of Section 18407.

19754. (a) The voluntary compliance initiative described in this chapter applies to any taxpayer who was not eligible to participate in the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003–11, and during the period from January 1, 2004, to April 15, 2004, does both of the following:

(1) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction to underreport the taxpayer's tax liability for that taxable year. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required under paragraph (2) of subdivision (a). Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After April 15, 2004, the Franchise Tax Board may issue a deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19752.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this chapter. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this chapter null and void and the taxpayer may be assessed any penalties that may apply.

19755. (a) Notwithstanding Section 19057, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(b) This section shall apply to any return filed under this part on or after January 1, 2000.

19772. (a) Any large entity or high net worth individual who fails to include on any return or statement any information with respect to a reportable transaction that is required under Section 6011 of the Internal Revenue Code, as modified by Section 18407, to be included with that return or statement shall pay a penalty for each omission in the amount determined under subdivision (b).

(b) (1) Except as provided in paragraph (2), the amount of the penalty under subdivision (a) shall be fifteen thousand dollars ($15,000).

(2) The amount of the penalty under subdivision (a) with respect to a listed transaction shall be thirty thousand dollars ($30,000).

(c) For purposes of this section:

(1) The term ''high net worth individual'' means, with respect to a transaction, an individual whose net worth exceeds two million dollars ($2,000,000) immediately before the transaction.

(2) The term ''large entity'' means, with respect to any taxable year, a person (other than an individual) with gross receipts in excess of ten million dollars ($10,000,000) for either the taxable year in which the reportable transaction occurs or in the preceding taxable year. Rules similar to the rules of Section 448(c)(2) and 448(c)(3) of the Internal Revenue Code, other than Section 448(c)(3)(A) of the Internal Revenue Code, shall apply for purposes of this paragraph.

(d) For purposes of this section:

(1) The term ''reportable transaction'' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under Section 18407, that transaction is of a type that the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board determines as having a potential for tax avoidance or evasion.

(2) Except as provided in regulations prescribed by the Secretary of the Treasury or by the Franchise Tax Board, the term ''listed transaction'' means a reportable transaction (as defined in paragraph (1)) that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury for purposes of Section 6011

of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board for purposes of Section 6011 of the Internal Revenue Code or Section 18407, as a tax avoidance transaction.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to any violation if all of the following apply:

(A) The violation is with respect to a reportable transaction other than a listed transaction.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) Article 3 (commencing with Section 19031) of Chapter 4 (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed under this section.

(g) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

19773. (a) If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of that understatement.

(b) For purposes of this section, both of the following shall apply:

(1) The term ''reportable transaction understatement'' means the sum of subparagraphs (A) and (B).

(A) The product of:

(i) The amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of that item (as shown on the taxpayer's return of tax).

(ii) The highest rate of tax imposed on the taxpayer under Part 10 (commencing with Section 17001) in the case of a taxpayer subject to

tax under that part or under Part 11 (commencing with Section 23001) in the case of a taxpayer that is subject to tax under that part.

(B) The amount of the decrease (if any) in the aggregate amount of credits determined under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), as applicable, that results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of that item.

(C) For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for that year, and any reduction in the amount of capital losses which would (without regard to Section 1211 of the Internal Revenue Code) be allowed for that year, shall be treated as an increase in taxable income.

(2) This section shall apply to any item that is attributable to either of the following:

(A) Any listed transaction.

(B) Any reportable transaction (other than a listed transaction) if a significant purpose of that transaction is the avoidance or evasion of tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(c) (1) Subdivision (a) shall be applied by substituting ''30 percent'' for ''20 percent'' with respect to the portion of any reportable transaction understatement with respect to which the requirement of Section 6664 of the Internal Revenue Code, as modified by subparagraph (A) of paragraph (2) of subdivision (d) of Section 19164, is not met.

(2) (A) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(B) The exercise of authority under subparagraph (A) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(C) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(d) For purposes of this section, the terms ''reportable transaction'' and ''listed transaction'' have the respective meanings given to those terms by subdivision (a) of Section 18407.

(e) (1) In the case of an understatement (as defined in Section 6662(d)(2) of the Internal Revenue Code) all of the following shall apply:

(A) The amount of the understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction

understatements for purposes of determining whether the understatement is a substantial understatement under Section 6662(d)(1) of the Internal Revenue Code.

(B) The addition to tax under subdivision (a) of Section 19164 shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

(2) (A) In determining the fraud penalty imposed under subdivision (c) of Section 19164, references to an underpayment in Section 6663 of the Internal Revenue Code shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

(B) This section does not apply to any portion of an understatement on which a penalty is imposed under Section 19774.

(3) Except as provided in regulations, in no event may any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement, if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board regarding the examination of the return or such other date as is specified by the Franchise Tax Board.

(4) For purposes of this subdivision, the term ''noneconomic substance transaction understatement'' has the meaning given that term by subdivision (c) of Section 19774.

19774. (a) If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of that understatement.

(b) (1) Subdivision (a) shall be applied by substituting ''20 percent'' for ''40 percent'' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(2) For taxable years beginning before January 1, 2003, ''adequately disclosed'' includes the disclosure of the tax shelter identification number on the taxpayer's return as required by subdivision (c) of Section 18628.

(c) For purposes of this section:

(1) The term ''noneconomic substance transaction understatement'' means any amount which would be an understatement under paragraph (1) of subdivision (b) of Section 19773 if Section 19773 were applied

by taking into account items attributable to noneconomic substance transactions rather than items to which Section 19773 applies.

(2) A ''noneconomic substance transaction'' includes the disallowance of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) ''Potentially abusive tax shelter'' means:

(1) Any tax shelter (as defined in Section 6111 of the Internal Revenue Code) with respect to which registration is required under Section 6111 of the Internal Revenue Code.

(2) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury or the Franchise Tax Board determines by regulations as having a potential for tax avoidance or evasion.

(c) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23000), or this part.

(d) This section shall apply to notices of proposed assessments mailed after the effective date of the act adding this section.

19778. For any amended return filed after April 15, 2004, and before the taxpayer is contacted by the Internal Revenue Service or the Franchise Tax Board regarding a potentially abusive tax shelter, then, for

taxable years beginning after December 31, 1998, with respect to any understatement of tax related to using reportable transactions as defined in Section 18407, as added by the act adding this section, the taxpayer is subject to interest as provided under Section 19101 but at a rate of 150 percent of the adjusted annual rate established under Section 19521.

SEC. 14. Section 21028 of the Revenue and Taxation Code is amended to read:

21028. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the Franchise Tax Board.

(3) For purposes of this section:

(A) ''Federally authorized tax practitioner'' means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) ''Tax advice'' means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, ''federal tax advice'' means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) ''Tax shelter'' means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the avoidance or evasion of the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(b) The privilege under subdivision (a) does not apply to any written communication between a federally authorized tax practitioner and any person, or any director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164), or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

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

SEC. 15. (a) Unless otherwise provided, this act shall apply with respect to any penalty assessed on or after January 1, 2004, on any return for which the statute of limitations on assessment has not expired. All other provisions of this act shall apply on and after January 1, 2004.

(b) Except as provided in subdivision (c), Sections 18407, 19772, and 19773 of the Revenue and Taxation Code, as amended or added by this act, apply to taxable years beginning on or after January 1, 2003.

(c) (1) The penalty provisions of Section 19772 apply to any person that satisfies both of the following:

(A) The person is subject to the provisions of Sections 18407 and 19772.

(B) The person has invested in a transaction after February 28, 2000, and before January 1, 2004, where that transaction becomes a listed transaction at any time.

(2) (A) A person that is subject to the provisions of Section 6111 of the Internal Revenue Code, as incorporated and modified by Section 18648, must register a tax shelter with the Franchise Tax Board before April 30, 2004, if that tax shelter was offered for sale between February 28, 2000, and January 1, 2004 and becomes a listed transaction on or before January 1, 2004.

(B) The penalty under Section 19173 applies for a failure to register the tax shelter under subparagraph (A).

(3) (A) Subdivision (c) of Section 18648 does not apply to licensed attorneys in the case of a transaction that was entered into before January 1, 2004, if the attorney is considered a material advisor solely due to the practice of law.

(B) The provisions of subparagraph (A) shall only apply to an attorney offering advice in an attorney-client relationship where:

(i) Legal advice of any kind is sought from a professional legal adviser in his or her capacity as a professional legal adviser;

(ii) The communications are made in confidence and relate to that purpose; and

(iii) The communications are made or received by the client.

(4) For purposes of applying Section 19778 of the Revenue and Taxation Code, Section 18407 of the Revenue and Taxation Code, as added by this act, applies for taxable years beginning after December 31, 1998.

SEC. 16. The Legislative Analyst, based on the information provided to it by the Franchise Tax Board and other available

information, shall report to the Legislature within two years of the effective date of this act regarding the impact of the act. To the extent feasible, this report shall include observations regarding the impact of the act on tax shelters, state tax collections, and the state's business climate.

SEC. 17. This act shall become operative only if Senate Bill 614 of the 2003–04 Regular Session is chaptered.

CHAPTER 655

An act to amend Section 24871 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 2, 2003.]

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

SECTION 1. Section 24871 of the Revenue and Taxation Code is amended to read:

24871. (a) (1) Section 852(b)(1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, does not apply.

(2) Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its ''net income'' shall be equal to its ''investment company income,'' as defined in subdivision (b).

(b) ''Investment company income'' means investment company taxable income, as defined in Section 852(b)(2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b)(2)(A) of the Internal Revenue Code, relating to an exclusion for net capital gain, does not apply.

(2) Section 852(b)(2)(B) of the Internal Revenue Code, relating to net operating losses, is modified to deny the deduction allowed under Sections 24416 and 24416.1, in lieu of denying the deduction allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b)(2)(C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Sections 24402, 24406, 24410, and 25106.

(4) The deduction for dividends paid, under Section 852(b)(2)(D) of the Internal Revenue Code, is modified to allow capital gain dividends

and exempt interest dividends (to the extent that interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b)(3)(A) of the Internal Revenue Code, relating to capital gains, does not apply.

(d) Section 852(b)(5)(B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, does not apply.

(e) Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment companies, is modified to refer to Sections 24402, 24406, 24410, and 25106, in lieu of Section 243 of the Internal Revenue Code.

SEC. 2. (a) The amendments made to Section 24871 of the Revenue and Taxation Code by this act shall be applied to taxable years beginning on or after January 1, 2003.

(b) It is the intent of the Legislature that no inference be drawn in connection with any matter governed by Section 24871 of the Revenue and Taxation Code, from the period to which the amendments made to that section by this act apply, for any taxable year beginning before January 1, 2003.

CHAPTER 656

An act to amend Sections 18628, 19116, 19164, 19166, 19173, 19177, 19179, 19504, 19715, and 21028 of, to add Section 18407 to, to add Chapter 9.5 (commencing with Section 19751) to Part 10.2 of Division 2 of, and to repeal and add Section 18648 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 2, 2003.]

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

SECTION 1. Section 18407 is added to the Revenue and Taxation Code, to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase ''any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part,'' shall be substituted for the phrase ''when required

by regulations prescribed by the Secretary any person made liable for any tax imposed by this title,'' contained therein.

(2) ''Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board'' shall be substituted for ''Secretary.''

(3) To additionally provide that ''reportable transaction'' includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that ''listed transaction'' includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish ''listed transactions'' (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the ''listed transactions'' identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) 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 standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of DISCS and former DISCS and FSC's and former FSC's, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. 2. Section 18628 of the Revenue and Taxation Code is amended to read:

18628. (a) Section 6111 of the Internal Revenue Code, relating to registration of tax shelters, applies, except as otherwise provided.

(b) (1) Except as provided in subdivision (g), a tax shelter organizer is required to send a duplicate of the federal registration information, if applicable, or the same information required for federal tax shelters for California tax shelters to the Franchise Tax Board not later than the day on which the first offering for sale of interests in that tax shelter occurs.

(2) (A) The information provided to the Franchise Tax Board pursuant to paragraph (1) shall also include any other information required by a Franchise Tax Board Notice.

(B) 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 additional information requested under this section.

(c) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(d) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, applies.

(e) Section 6111(c)(2)(A) of the Internal Revenue Code is amended by substituting the phrase ''under subtitle A of the Internal Revenue Code or under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of the Revenue and Taxation Code'' for ''under subtitle A''.

(f) (1) Section 6111(d) of the Internal Revenue Code is modified to further provide that, for purposes of this section and Section 18648, the term ''tax shelter'' includes any listed transaction (as defined under subdivision (a) of Section 18407).

(2) Section 6111(d)(1)(A) of the Internal Revenue Code is amended by substituting the phrase ''avoidance or evasion of federal income tax

or California income or franchise tax'' for ''avoidance or evasion of Federal income tax.''

(g) The registration requirements of this section apply to any tax shelter (within the meaning of Section 6111 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

(1) Organized in this state.

(2) Doing business in this state.

(3) Deriving income from sources in this state.

(4) At least one of its investors is a California taxpayer.

(h) In addition to the requirements set forth in subdivision (a), for any transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Code) at any time, those transactions shall be required to be registered with the Franchise Tax Board by the later of:

(1) Sixty days after entering into the transaction.

(2) Sixty days after the transaction becomes a listed transaction.

(3) April 30, 2004.

(i) In addition to the requirements set forth in subdivisions (a) and (h), for any transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a ''listed transaction'' at any time, those transactions shall be required to be registered with the Franchise Tax Board by the later of:

(1) Sixty days after entering into the transaction.

(2) Sixty days after the transaction becomes a listed transaction.

(3) April 30, 2004.

SEC. 3. Section 18648 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 18648 is added to the Revenue and Taxation Code, to read:

18648. (a) Section 6112 of the Internal Revenue Code, relating to organizers and sellers of potentially abusive tax shelters that must keep lists of investors, applies except as otherwise provided.

(b) Section 6112 of the Internal Revenue Code is modified by substituting the phrase ''Secretary or the Franchise Tax Board'' for the word ''Secretary'' each place it appears.

(c) The requirement to maintain lists under this section shall apply to any organizer, seller or material advisor of a potentially abusive tax shelter (within the meaning of Section 6112 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

(1) Organized in this state.

(2) Doing business in this state.

(3) Deriving income from sources in this state.

(4) At least one of its investors is a California taxpayer.

(d) (1) Notwithstanding any regulation issued under Section 6112 of the Internal Revenue Code, the list required to be maintained by this section for listed transactions, as defined in subdivision (a) Section 18407, shall be maintained in the form and manner prescribed by the Franchise Tax Board.

(2) 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 requirement prescribed by the Franchise Tax Board under this section.

(3) For transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Code) at any time, the lists shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(C) April 30, 2004.

(4) For transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a ''listed transaction'' at any time, the list shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(C) April 30, 2004.

(e) The terms ''organizer,'' ''seller,'' and ''material advisor'' mean a person that meets any of the requirements of this section or of Section 6112 of the Internal Revenue Code or regulations issued thereunder.

SEC. 5. Section 19116 of the Revenue and Taxation Code is amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), ''notification period'' means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) ''Suspension period'' means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars ($200,000) that have been contacted by the Franchise Tax Board

regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777).

(g) This section shall apply to taxable years ending after October 10, 1999.

SEC. 6. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty, except as otherwise provided.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an S corporation, that has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars ($2,500)), or

(B) Five million dollars ($5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19773 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6662(d)(2)(B)(i) of the Internal Revenue Code is modified to substitute the phrase ''the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment'' for the phrase

''the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment'' contained therein.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code (as modified by subdivision (d)), Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the ''listed transactions'' identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board. This subdivision applies only to list of positions relating to abusive tax shelters, within the meaning of Section 19777.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6664 of the Internal Revenue Code is modified to additionally provide that no penalty shall be imposed under Section 19773 with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith with respect to that portion.

(2) Paragraph (1) does not apply to any reportable transaction understatement unless all of the following requirements are met:

(A) (i) The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under Section 6011 of the Internal Revenue Code, as modified by Section 18407.

(ii) A taxpayer failing to adequately disclose in accordance with Section 6011 of the Internal Revenue Code, as modified by Section 18407, shall be treated as meeting the requirements of this subparagraph, if the penalty for that failure was rescinded under subdivision (e) of Section 19772.

(iii) For taxable years beginning on or before January 1, 2003, ''adequately disclosed'' includes the disclosure of the tax shelter identification number on the taxpayer's return, as required by subdivision (c) of Section 18628.

(B) There is or was substantial authority for that treatment.

(C) The taxpayer reasonably believed that that treatment was more likely than not the proper treatment.

(3) For purposes of subparagraph (C) of paragraph (2) all of the following shall apply:

(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if that belief meets both of the following requirements:

(i) Is based on the facts and law that exist at the time the return of tax that includes that tax treatment is filed.

(ii) Relates solely to the taxpayer's chances of success on the merits of that treatment and does not take into account the possibility that the return will not be audited, that the treatment will not be raised on audit, or that the treatment will be resolved through settlement if it is raised.

(B) (i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if either of the following conditions are met:

(I) The tax advisor is described in clause (ii).

(II) The opinion is described in clause (iii).

(ii) A tax advisor is described in this clause if the tax advisor meets any of the following conditions:

(I) Is a material advisor (within the meaning of subdivision (d) of Section 18648) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of Sections 267(b) or 707(b)(1) of the Internal Revenue Code) to any person who so participates.

(II) Is compensated directly or indirectly by a material advisor with respect to the transaction.

(III) Has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained.

(IV) As determined under regulations prescribed by either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board, has a continuing financial interest with respect to the transaction.

(iii) For purposes of clause (i), an opinion is disqualified if the opinion meets any of the following conditions:

(I) Is based on unreasonable, factual, or legal assumptions (including assumptions as to future events).

(II) Unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person.

(III) Does not identify and consider all relevant facts.

(IV) Fails to meet any other requirement as either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board may by forms and instructions prescribe.

(e) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(f) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 461(i)(3)(C) of the Internal Revenue Code is modified by substituting a reference to ''Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164'' instead of the reference to ''Section 6662(d)(2)(C)(iii)'' contained therein.

(g) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 1274(b)(3)(B)(i) of the Internal Revenue Code is modified to provide that for purposes of Section 1274(b)(3)(B) of the Internal Revenue Code, the term ''tax shelter'' means (1) a partnership or other entity, (2) any investment plan or arrangement, or (3) any other plan or arrangement, if a significant purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 7. Section 19166 of the Revenue and Taxation Code is amended to read:

19166. A penalty shall be imposed for understatement of any taxpayer's liability by a tax return preparer. The penalty shall be determined in accordance with Section 6694 of the Internal Revenue Code, except as otherwise provided.

(a) (1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6694(a) of the Internal Revenue Code is modified to substitute ''one thousand dollars ($1,000)'' for ''two hundred fifty dollars ($250).''

(2) Section 6694(a)(1) of the Internal Revenue Code is modified to substitute the phrase ''reasonable belief that the tax treatment in that position was more likely than not the proper treatment'' instead of the phrase ''realistic possibility of being sustained on its merits'' contained therein.

(3) Section 6694(a)(3) of the Internal Revenue Code is modified to substitute the phrase ''or there was no reasonable basis for the tax treatment of that position'' instead of the phrase ''or was frivolous'' contained therein.

(b) Section 6694(b) of the Internal Revenue Code is modified to substitute ''$5,000'' for ''$1,000.''

(c) Section 6694(c) of the Internal Revenue Code shall not apply and, in lieu thereof, the following shall apply:

(1) If, within 30 days after the day on which notice and demand of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is made against any person who is an income tax return preparer, that person pays an amount which is not less than 15 percent of the amount of that penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of that penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding Section 19381, the beginning of that proceeding or levy during the time that prohibition is in force may be enjoined in a proceeding in the superior court.

(2) If, within 30 days after the day on which a claim for refund of any partial payment of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is denied (or, if earlier, within 30 days after the expiration of six months after the day on which the claim for refund has been filed), the income tax return preparer fails to begin a proceeding in the superior court for the determination of his or her liability for that penalty, paragraph (1) shall cease to apply with respect to that penalty, effective on the day following the close of the applicable 30-day period referred to in this subdivision.

(3) The running of the period of limitations provided in Section 19371 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Franchise Tax Board is prohibited from collecting by levy or a proceeding in court.

SEC. 8. Section 19173 of the Revenue and Taxation Code is amended to read:

19173. (a) (1) Any person required to register under Section 18628 or maintain and provide a list under Section 18648, for any calendar year, is liable for a penalty, as determined under subdivision (b), if that person does any of the following:

(A) (i) Fails to register under Section 18628 on or before the date prescribed therefor.

(ii) For reportable transactions (as defined under Section 18407), fails to furnish the list within 20 days of a request.

(iii) For listed transactions, fails to provide the list on or before the date prescribed therefor in Section 18648.

(B) Registers a tax shelter or provides a list which fails to show the information required under Section 18628 or Section 18648.

(C) Fails to furnish the required statement to each investor.

(2) Paragraph (1) of this subdivision does not apply if it is shown that subdivision (d) applies or that the information required under paragraph (2) of subdivision (b) of Section 18628 was not identified in a Franchise Tax Board notice issued prior to the date the transaction or shelter was entered into.

(b) (1) (A) For purposes of subdivision (a), the amount determined under this subdivision for a tax shelter required to be registered under Section 18628 is, except as provided in subparagraph (B), fifteen thousand dollars ($15,000).

(B) If the penalty is with respect to a listed transaction (as defined under Section 18407), the amount determined under this subdivision for a tax shelter required to be registered under Section 18628 shall be the greater of:

(i) One hundred thousand dollars ($100,000).

(ii) Fifty percent of the gross income that the organizer or material advisor derived from that activity.

(C) In the case of intentional disregard by an organizer or material advisor of the requirement to maintain and provide information regarding a listed transaction (as defined under Section 18407), the percentage of gross income under clause (ii) of subparagraph (B) is ''75 percent'' instead of ''50 percent.''

(2) For purposes of subdivision (a), the amount determined under this subdivision for the failure to provide a list required to be maintained under Section 18648 is as follows:

(A) For reportable transactions, the penalty amount shall be ten thousand dollars ($10,000) for each day after the 20th day that the organizer or material advisor has failed to make the list available to the Franchise Tax Board after written request for that list was made by the Franchise Tax Board.

(B) For listed transactions, the penalty amount shall be determined under subparagraph (B) of paragraph (1).

(c) The penalty imposed by subdivision (a) shall be assessed against the person required to file a copy of the federal registration or required to register under Section 18628, or the person required to maintain or provide a list under Section 18648. The penalty may be assessed at any time during the period ending eight years after the failure has occurred.

(d) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by subdivision (a) with respect to any violation with respect to a tax shelter required to be registered under Section 18628, or a list required to be maintained or provided under Section 18648, if all of the following apply:

(A) The violation is with respect to a reportable transaction, other than a listed transaction (as defined under subdivision (a) of Section 18407).

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(e) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(f) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 9. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. (a) A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code, except as otherwise provided.

(b) Notwithstanding Section 6700(a) of the Internal Revenue Code, if an activity with respect to which a penalty imposed under Section 6700(a) of the Internal Revenue Code involves a statement described in Section 6700(a)(2)(A) of the Internal Revenue Code, the amount of the penalty imposed under subdivision (a) shall be equal to 50 percent of the gross income derived (or to be derived) from that activity by the person on which the penalty is imposed.

SEC. 10. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty shall be imposed for filing a frivolous return. The penalty shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) Section 6702 of the Internal Revenue Code shall be applied to returns required to be filed under this part.

(b) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6702(a) of the Internal Revenue Code is modified as follows:

(1) By substituting ''$5,000'' instead of ''$500.''

(2) By substituting the phrase ''person'' instead of the phrase ''individual'' in each place that it appears.

(3) By substituting ''tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part'' instead of the phrase ''tax imposed by subtitle A'' contained therein.

(4) By substituting the phrase ''is based on'' instead of the phrase ''is due to'' contained therein.

(5) By substituting the phrase ''frivolous or is based on a position that the Franchise Tax Board has identified as frivolous under subdivision (c) of Section 19179'' instead of the phrase ''frivolous'' contained therein.

(6) By substituting the phrase ''reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part as determined by the Franchise Tax Board'' instead of the phrase ''a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws'' contained therein.

(c) (1) The Franchise Tax Board shall prescribe (and periodically revise) a list of positions which the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board has identified as being frivolous for purposes of this section.

(2) 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 standard, criterion, procedure, determination, rule, notice, or guideline established or prescribed by the Franchise Tax Board pursuant to paragraph (1).

(d) (1) Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars ($5,000).

(2) For purposes of this section, all of the following shall apply:

(A) The term ''specified frivolous submission'' means a specified submission if any portion of that submission meets any of the following conditions:

(i) Is based on a position which the Franchise Tax Board has identified as frivolous under subdivision (c).

(ii) Reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with

Section 17001), Part 11 (commencing with Section 23001) or this part as determined by the Franchise Tax Board.

(B) The term ''specified submission'' means any of the following:

(i) A protest under Section 19041.

(ii) A request for a hearing under Section 19044.

(iii) An application under any of the following sections:

(I) Section 19008 (relating to agreements for payment of tax liability in installments).

(II) Section 19443 (relating to compromises).

(III) Section 21004 (relating to actions of the Taxpayer Right's Advocate).

(3) If the Franchise Tax Board provides a person with notice that a submission is a specified frivolous submission and the person withdraws that submission within 30 days after the notice, the penalty imposed under paragraph (1) does not apply with respect to that submission.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section if both of the following apply:

(A) Imposing the penalty would be against equity and good conscience.

(B) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) The penalties imposed by this section shall be in addition to any other penalty provided by law.

SEC. 11. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified

time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board, and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

SEC. 12. Section 19715 of the Revenue and Taxation Code is amended to read:

19715. (a) A civil action in the name of the State of California to enjoin any person from further engaging in specified conduct may be commenced at the request of the Franchise Tax Board. Any action under this section shall be brought in accordance with Section 19707. The court may exercise its jurisdiction over that action separate and apart from any other action brought by the State of California against that person.

(b) In any action under subdivision (a), the court may enjoin the person from engaging in the specified conduct or in any other activity subject to penalty under this part, if the court finds both of the following:

(1) That the person has engaged in any specified conduct.

(2) That injunctive relief is appropriate to prevent recurrence of that specified conduct.

(c) For purposes of this section, the term ''specified conduct'' means any action, or failure to take action, subject to penalty under Section 19173, 19174, 19177, or 19178.

SEC. 13. Chapter 9.5 (commencing with Section 19751) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 9.5. TAX SHELTERS

19751. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

(b) The voluntary compliance initiative shall be conducted during the period from January 1, 2004, to April 15, 2004, inclusive, pursuant to Section 19754. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions for taxable years beginning before January 1, 2003.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this chapter.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this chapter.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this chapter constitutes ''contact'' within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and paragraph (3) of subdivision (e) of Section 19773 and Section 19777, regarding increased interest rate.

19752. Any taxpayer who meets the requirements of Section 19754 may elect the application of either, but not both, of the following:

(a) Voluntary compliance without appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to

participate in the initiative, as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this chapter.

(3) No penalty may be waived or abated under this chapter if the penalty imposed is attributable to an assessment of taxes that became final prior to December 31, 2003.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, the taxpayer may not file a claim for refund for the amounts paid in connection with abusive tax avoidance transactions under this chapter.

(b) Voluntary compliance with appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties, except the accuracy related penalty under Section 19164 (as in effect immediately before enactment of the act adding this section), imposed by this part, for each of the taxable years for which the taxpayer elects to participate in the initiative, that are owed as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action may be brought against the taxpayer for each of the taxable years for which the taxpayer voluntarily complies under this section.

(3) No penalty may be waived under this chapter if the penalty imposed is attributable to an assessment of taxes that became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this chapter applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this chapter applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this chapter. A separate election for each taxable year governed by this chapter is not allowed.

19753. (a) This chapter does not apply to violations of this part for which, as of December 31, 2003, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction or transactions.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction or transactions.

(b) No refund or credit shall be granted with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this chapter.

(c) For purposes of this chapter, an ''abusive tax avoidance transaction'' means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, ''listed transactions'' as described in subdivision (a) of Section 18407.

19754. (a) The voluntary compliance initiative described in this chapter applies to any taxpayer who was not eligible to participate in the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003–11, and during the period from January 1, 2004, to April 15, 2004, does both of the following:

(1) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction to underreport the taxpayer's tax liability for that taxable year. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required under paragraph (2) of subdivision (a). Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After April 15, 2004, the Franchise Tax Board may issue a deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19752.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this chapter. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this chapter null and void and the taxpayer may be assessed any penalties that may apply.

19755. (a) Notwithstanding Section 19057, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(b) This section shall apply to any return filed under this part on or after January 1, 2000.

19772. (a) Any large entity or high net worth individual who fails to include on any return or statement any information with respect to a reportable transaction that is required under Section 6011 of the Internal Revenue Code, as modified by Section 18407, to be included with that return or statement shall pay a penalty for each omission in the amount determined under subdivision (b).

(b) (1) Except as provided in paragraph (2), the amount of the penalty under subdivision (a) shall be fifteen thousand dollars ($15,000).

(2) The amount of the penalty under subdivision (a) with respect to a listed transaction shall be thirty thousand dollars ($30,000).

(c) For purposes of this section:

(1) The term ''high net worth individual'' means, with respect to a transaction, an individual whose net worth exceeds two million dollars ($2,000,000) immediately before the transaction.

(2) The term ''large entity'' means, with respect to any taxable year, a person (other than an individual) with gross receipts in excess of ten million dollars ($10,000,000) for either the taxable year in which the reportable transaction occurs or in the preceding taxable year. Rules similar to the rules of Section 448(c)(2) and 448(c)(3) of the Internal Revenue Code, other than Section 448(c)(3)(A) of the Internal Revenue Code, shall apply for purposes of this paragraph.

(d) For purposes of this section:

(1) The term ''reportable transaction'' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under Section 18407, that transaction is of a type that the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board determines as having a potential for tax avoidance or evasion.

(2) Except as provided in regulations prescribed by the Secretary of the Treasury or by the Franchise Tax Board, the term ''listed transaction'' means a reportable transaction (as defined in paragraph (1)) that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury for purposes of Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board for purposes of Section 6011 of the Internal Revenue Code or Section 18407, as a tax avoidance transaction.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to any violation if all of the following apply:

(A) The violation is with respect to a reportable transaction other than a listed transaction.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001)

or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) Article 3 (commencing with Section 19031) of Chapter 4 (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed under this section.

(g) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

19773. (a) If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of that understatement.

(b) For purposes of this section, both of the following shall apply:

(1) The term ''reportable transaction understatement'' means the sum of subparagraphs (A) and (B).

(A) The product of:

(i) The amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of that item (as shown on the taxpayer's return of tax).

(ii) The highest rate of tax imposed on the taxpayer under Part 10 (commencing with Section 17001) in the case of a taxpayer subject to tax under that part or under Part 11 (commencing with Section 23001) in the case of a taxpayer that is subject to tax under that part.

(B) The amount of the decrease (if any) in the aggregate amount of credits determined under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), as applicable, that results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of that item.

(C) For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for that year, and any reduction in the amount of capital losses which would (without regard to Section 1211 of the Internal Revenue Code) be allowed for that year, shall be treated as an increase in taxable income.

(2) This section shall apply to any item that is attributable to either of the following:

(A) Any listed transaction.

(B) Any reportable transaction (other than a listed transaction) if a significant purpose of that transaction is the avoidance or evasion of tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(c) (1) Subdivision (a) shall be applied by substituting ''30 percent'' for ''20 percent'' with respect to the portion of any reportable transaction understatement with respect to which the requirement of Section 6664 of the Internal Revenue Code, as modified by subparagraph (A) of paragraph (2) of subdivision (d) of Section 19164, is not met.

(2) (A) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(B) The exercise of authority under subparagraph (A) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(C) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(d) For purposes of this section, the terms ''reportable transaction'' and ''listed transaction'' have the respective meanings given to those terms by subdivision (a) of Section 18407.

(e) (1) In the case of an understatement (as defined in Section 6662(d)(2) of the Internal Revenue Code) all of the following shall apply:

(A) The amount of the understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether the understatement is a substantial understatement under Section 6662(d)(1) of the Internal Revenue Code.

(B) The addition to tax under subdivision (a) of Section 19164 shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

(2) (A) In determining the fraud penalty imposed under subdivision (c) of Section 19164, references to an underpayment in Section 6663 of the Internal Revenue Code shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

(B) This section does not apply to any portion of an understatement on which a penalty is imposed under Section 19774.

(3) Except as provided in regulations, in no event may any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement, if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board regarding the examination of the return or such other date as is specified by the Franchise Tax Board.

(4) For purposes of this subdivision, the term ''noneconomic substance transaction understatement'' has the meaning given that term by subdivision (c) of Section 19774.

19774. (a) If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of that understatement.

(b) (1) Subdivision (a) shall be applied by substituting ''20 percent'' for ''40 percent'' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(2) For taxable years beginning before January 1, 2003, ''adequately disclosed'' includes the disclosure of the tax shelter identification number on the taxpayer's return as required by subdivision (c) of Section 18628.

(c) For purposes of this section:

(1) The term ''noneconomic substance transaction understatement'' means any amount which would be an understatement under paragraph (1) of subdivision (b) of Section 19773 if Section 19773 were applied by taking into account items attributable to noneconomic substance transactions rather than items to which Section 19773 applies.

(2) A ''noneconomic substance transaction'' includes the disallowance of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) ''Potentially abusive tax shelter'' means:

(1) Any tax shelter (as defined in Section 6111 of the Internal Revenue Code) with respect to which registration is required under Section 6111 of the Internal Revenue Code.

(2) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury or the Franchise Tax Board determines by regulations as having a potential for tax avoidance or evasion.

(c) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23000), or this part.

(d) This section shall apply to notices of proposed assessments mailed after the effective date of the act adding this section.

19778. For any amended return filed after April 15, 2004, and before the taxpayer is contacted by the Internal Revenue Service or the Franchise Tax Board regarding a potentially abusive tax shelter, then, for taxable years beginning after December 31, 1998, with respect to any understatement of tax related to using reportable transactions as defined in Section 18407, as added by the act adding this section, the taxpayer is subject to interest as provided under Section 19101 but at a rate of 150 percent of the adjusted annual rate established under Section 19521.

SEC. 14. Section 21028 of the Revenue and Taxation Code is amended to read:

21028. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the Franchise Tax Board.

(3) For purposes of this section:

(A) ''Federally authorized tax practitioner'' means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) ''Tax advice'' means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, ''federal tax advice'' means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) ''Tax shelter'' means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the avoidance or evasion of the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(b) The privilege under subdivision (a) does not apply to any written communication between a federally authorized tax practitioner and any person, or any director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164), or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

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

SEC. 15. (a) Unless otherwise provided, this act shall apply with respect to any penalty assessed on or after January 1, 2004, on any return for which the statute of limitations on assessment has not expired. All other provisions of this act shall apply on and after January 1, 2004.

(b) Except as provided in subdivision (c), Sections 18407, 19772, and 19773 of the Revenue and Taxation Code, as amended or added by this act, apply to taxable years beginning on or after January 1, 2003.

(c) (1) The penalty provisions of Section 19772 apply to any person that satisfies both of the following:

(A) The person is subject to the provisions of Sections 18407 and 19772.

(B) The person has invested in a transaction after February 28, 2000, and before January 1, 2004, where that transaction becomes a listed transaction at any time.

(2) (A) A person that is subject to the provisions of Section 6111 of the Internal Revenue Code, as incorporated and modified by Section 18648, must register a tax shelter with the Franchise Tax Board before April 30, 2004, if that tax shelter was offered for sale between February 28, 2000, and January 1, 2004, and becomes a listed transaction on or before January 1, 2004.

(B) The penalty under Section 19173 applies for a failure to register the tax shelter under paragraph (A).

(3) (A) Subdivision (c) of Section 18648 does not apply to licensed attorneys in the case of a transaction that was entered into before January 1, 2004, if the attorney is considered a material advisor solely due to the practice of law.

(B) The provisions of subparagraph (A) shall only apply to an attorney offering advice in an attorney-client relationship where:

(i) Legal advice of any kind is sought from a professional legal adviser in his or her capacity as a professional legal adviser.

(ii) The communications are made in confidence and relate to that purpose.

(iii) The communications are made or received by the client.

(4) For purposes of applying Section 19778 of the Revenue and Taxation Code, Section 18407 of the Revenue and Taxation Code, as added by this act, applies for taxable years beginning after December 31, 1998.

SEC. 16. The Legislative Analyst, based on the information provided to it by the Franchise Tax Board and other available information, shall report to the Legislature within two years of the effective date of this act regarding the impact of the act. To the extent feasible, this report shall include observations regarding the impact of the act on tax shelters, state tax collections, and the state's business climate.

SEC. 17. This act shall become operative only if Assembly Bill 1601 of the 2003–04 Regular Session is chaptered.

CHAPTER 657

An act to add Chapter 1.5 (commencing with Section 10286) to Part 2 of Division 2 of the Public Contract Code, and to amend Section 25111

of, and to add Section 25113 to, the Revenue and Taxation Code, relating to state contracts.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 2, 2003.]

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

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

(a) By reincorporating in tax haven countries, a number of publicly traded United States based companies are avoiding their fair share of California taxes and have undermined the interests and rights of their shareholders.

(b) An expatriate company is a United States based company that has moved in name and on paper only to a tax haven country and has no substantial business activities in the country of reincorporation.

(c) When a company expatriates, its shareholders are generally left without the opportunity to pursue derivative lawsuits and without the ability to enforce legal judgments against the company under the United States and California securities laws. Therefore, matters relating to standard fiduciary duties of officers and directors of the corporation may be less dutifully monitored or controlled.

(d) Further, the shareholders of expatriate companies stand to lose their rights to submit a shareholder proposal, inspect or obtain copies of the company's corporate records, or approve a sale, lease, or exchange of all or substantially all of the corporation's assets. In some cases, an expatriate company may significantly limit shareholder voting rights or dissenting shareholders' appraisal rights.

(e) This diminution of shareholder rights is the result of the corporate practice, known as ''corporate expatriation,'' which is part of a larger pattern of deceptive corporate practices and accounting manipulation that continue to undermine the faith and confidence of investors in the integrity of the financial markets.

(f) The State of California and many of its residents are invested in various corporations, mutual funds, and pension plans.

(g) The state's investments and pension funds depend on investor faith and confidence in the transparency, fairness, and integrity of the markets.

(h) A corporate reincorporation greatly impedes the state and the state's pension funds in safeguarding shareholder rights and the state's financial interests.

(i) Further, substandard corporate governance models and accounting practices of an expatriate corporation may impede its ability to do business with the state in a manner required by state law and sound public contracting practices. At the same time, the state's ability to

enforce its contract rights or enforce judgments against the expatriate corporation may be limited as the result of corporate expatriation.

(j) Further, an expatriate corporation, by avoiding its fair share of taxes, gains an unfair advantage over corporations that do not expatriate when competing for state contracts, and thereby, undermines the competitive state bidding process.

(k) It is, therefore, in the best interests of the state to restore faith in corporate practices and in the state's financial system by safeguarding the rights of shareholders, protecting the state's pension funds and other state investments, ensuring a fair business climate, and guaranteeing that similarly situated companies doing business in the state pay their fair share of taxes. Furthermore, the preservation of state control over matters relating to procurement and expenditure of its revenues, a vital and valid public purpose, is served by prohibiting the state from doing business with publicly held expatriate companies.

(*l*) Accordingly, it is the intent of the Legislature that, absent a compelling public interest, the state not enter into any agreement or contract with any publicly held expatriate corporation.

SEC. 2. Chapter 1.5 (commencing with Section 10286) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 1.5. CALIFORNIA TAXPAYER AND SHAREHOLDER PROTECTION ACT OF 2003

10286. This chapter shall be known and may be cited as the California Taxpayer and Shareholder Protection Act of 2003.

10286.1. (a) For purposes of this part, except as otherwise provided in subdivisions (b) and (c), a state agency may not enter into any contract with an expatriate corporation or its subsidiaries.

(b) (1) For purposes of this article, an ''expatriate corporation'' means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:

(A) The United States is the principal market for the public trading of the foreign incorporated entity.

(B) The foreign incorporated entity has no substantial business activities in the place of incorporation.

(C) Either clause (i) or clause (ii) applies:

(i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former

shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

(ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.

(iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

(2) Notwithstanding subdivision (a), a state agency may contract with an expatriate corporation, or its subsidiary, if it was an expatriate corporation before January 1, 2004, to which both of the following apply:

(A) The foreign entity provides, by operation of law, by provisions of its governing documents, by resolution of its board of directors, or in any other manner, at least the following shareholders' rights:

(i) Shareholders of the entity have the right to inspect, at a principal place of business in the United States, copies of the entity's books and records, including, but not limited to, shareholder names, addresses, and shareholdings in accordance with the corporation law, as amended from time to time and as that law is interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporation Act, as that act may be amended from time to time, provided that, if the corporate law of the United States jurisdiction in which the entity was previously incorporated or the Model Business Corporation Act does not provide access to the shareholder names, addresses, and shareholdings, these books and records are available for inspection by shareholders for purposes properly related to their status as shareholders of the entity.

(ii) The entity permits its shareholders to bring derivative proceedings on behalf of the entity, provided that these derivative proceedings are brought on a basis and under the terms applicable under the law, as amended from time to time and as interpreted by, or required by, the courts of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, on a basis and under the terms set forth in the Model Business Corporations Act as that act may be amended from time to time and as it is interpreted by, or required by, the courts.

(iii) Entity transactions in which any director is interested are approved in accordance with the applicable law, as amended from time to time and as interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as may be amended from time to time and as interpreted by the courts.

(iv) The entity has consented to the jurisdiction, for any otherwise available cause of action by or on behalf of the entity's shareholders, including any pendent state causes of action, of all of the following courts:

(I) The state courts of one or more states.

(II) The United States federal courts in any state in which the entity consents to the jurisdiction of that state's courts pursuant to subclause (I).

(v) The entity has appointed an agent for service of process in the state or states in which the entity has consented to jurisdiction, as described in clause (iv), and the entity meets at least one of the following conditions:

(I) The entity has unencumbered assets in the United States, which assets may include equity or debt investments in United States companies, with a book value in excess of fifty million dollars ($50,000,000), and the entity delivers to the Secretary of State an opinion of an attorney licensed in the United States that judgments rendered against the entity may be satisfied by using these assets.

(II) The entity posts a bond or similar security in an amount of at least fifty million dollars ($50,000,000).

(III) The entity has directors' and officers' insurance in an amount of at least fifty million dollars ($50,000,000).

(vi) The entity agrees that, in connection with any lawsuit brought against it by its shareholders in any court in which the entity has consented to jurisdiction as described in clause (iv), the entity will provide to the court notice of the manner in which the entity complied with clause (v) and, if the entity complied with that clause in the manner specified in subclause (I) of clause (v), a copy of the opinion described in that subclause.

(vii) Shareholder approval is required for any sale of all or substantially all of the entity's assets in accordance with the law, as amended from time to time and as it is interpreted by the courts, of the United States jurisdiction in which it was previously incorporated, or, if it was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as it may be amended from time to time.

(viii) The directors and officers of the entity occupy a fiduciary relationship with the entity and its shareholders and these directors and officers, in performing their duties, act in good faith in a manner that a director or officer believes to be in the best interests of the entity and its shareholders, as that standard of care is interpreted by the courts.

(ix) The entity agrees to hold no more than one of every four annual shareholder meetings in a location outside the United States and, in the event that the entity holds an annual meeting outside the United States, the entity agrees to provide access to that meeting through a Web cast or other technology that allows the entity's shareholders to do both of the following:

(I) Listen to the meeting, watch the meeting, or both.

(II) Send questions that will be addressed at the meeting.

(x) The entity provides a description of the shareholder rights described in clauses (i) to (ix), inclusive, and any subsequent changes to these rights, on the entity's Web site or in its 10K filings with the United States Securities and Exchange Commission.

(B) The entity uses worldwide combined reporting to calculate the income on which it pays taxes to the state.

(c) The chief executive officer of a state agency or his or her designee may waive the prohibition specified in subdivision (a) if the executive officer or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest. For purposes of this section, a ''compelling public interest'' includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in Section 1102. If a waiver is granted to a vendor pursuant to this subdivision, the requirement to submit a declaration of compliance, as set forth in paragraph (1) of subdivision (d), does not apply to that vendor.

(d) (1) For purposes of this chapter, ''state agency'' means every state office, department, division, bureau, board, commission, and the California State University, but does not include the University of California, the Legislature, the courts, or any agency in the judicial branch of government.

(2) On or after January 1, 2004, all state agencies shall, as a condition of the contract, require any vendor that is offered a contract to do business with the state to submit a declaration stating that the vendor is eligible to contract with the state pursuant to this section.

(3) A vendor that declares as true any material matter in a declaration described in this subdivision that he or she knows to be false is guilty of a misdemeanor.

(e) (1) Except as provided in paragraph (2), this section applies to contracts that are entered into on or after January 1, 2004.

(2) With respect to an entity that was an expatriate corporation, as defined in paragraph (1) of subdivision (b), before January 1, 2004, this section applies to contracts that are entered into on or after April 1, 2004.

SEC. 3. Section 25111 of the Revenue and Taxation Code is amended to read:

25111. (a) The making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water's-edge group and which is subject to tax under this part makes the election. A single taxpayer that is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivision (b). Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated corporation that is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer that is subsequently proved to be a member of the water's-edge group pursuant to a Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for a taxable year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) (A) With the permission of the Franchise Tax Board.

(B) The Franchise Tax Board shall consent to a termination requested by all members of a water's-edge group, if the purpose of the request is to permit the state to contract with an expatriate corporation, or its subsidiary, pursuant to paragraph (2) of subdivision (b) of Section 10286.1 of the Public Contract Code. A water's-edge election terminated pursuant to this subparagraph shall, however, be effective for the year in which the expatriate corporation, or its subsidiary, enters into the contract with the state.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions that are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

SEC. 4. Section 25113 is added to the Revenue and Taxation Code, to read:

25113. (a) Except as provided in subdivision (f), for taxable years beginning on or after January 1, 2003, the election provided for in Section 25110 shall be made on an original, timely filed return for the year of the election. The election will be considered valid if both of the following conditions are satisfied:

(1) The tax is computed in a manner consistent with a water's-edge election.

(2) A written notification of election is filed with the return on a form prescribed by the Franchise Tax Board. Pursuant to regulations promulgated under this section, the Franchise Tax Board may accept the filing of other objective evidence that supports the conclusion that a water's-edge election was intended in lieu of notification on the designated form.

(b) Except as otherwise provided, a water's-edge election shall be effective only if made by every member of the self-assessed combined reporting group that is subject to taxation under this part.

(1) An election made on a group return of a self-assessed combined reporting group shall constitute an election by each taxpayer member included in that group return, unless one of those taxpayers files a separate return in which no election is made and paragraph (2) does not apply.

(2) A taxpayer that fails to make an election on its own timely filed original return shall be deemed to have elected if either of the following applies:

(A) It has a parent corporation that is an electing taxpayer that included the income and apportionment factors of the nonelecting taxpayer in the self-assessed combined reporting group reflected in the electing parent's timely filed original return, including a group return.

(B) The income and apportionment factors of the nonelecting taxpayer are reflected in the self-assessed combined reporting group of a timely filed original return of an electing taxpayer, and the notification of election filed by the electing taxpayer pursuant to paragraph (2) of subdivision (a) is signed by an officer or other authorized agent of either a parent corporation of the nonelecting taxpayer or another corporation with authority to bind the nonelecting taxpayer to an election.

(3) For purposes of this subdivision, a ''parent corporation'' of the taxpayer is a corporation that owns or constructively owns stock possessing more than 50 percent of the voting power of the taxpayer as determined under subdivisions (e) and (f) of Section 25105.

(4) If a corporation that is a member of a combined reporting group is not itself subject to taxation under this part in the year for which the water's-edge election is made, but subsequently becomes subject to taxation under this part, that corporation shall be deemed to have elected with the other taxpayer members of the combined reporting group.

(5) A taxpayer that is engaged in more than one apportioning trade or business as defined in paragraph (6) of subdivision (d) of Section 25128 may make a separate election for each apportioning trade or business.

(c) A water's-edge election shall remain in effect or be terminated in accordance with this subdivision.

(1) Except as otherwise provided in this subdivision, if one or more electing taxpayer members of a combined reporting group later become disaffiliated or otherwise cease to be included in the combined reporting group, the water's-edge election shall remain in effect as to both the departing taxpayer members and any remaining taxpayer members.

(2) If an electing taxpayer and a nonelecting taxpayer become members of a new unitary affiliate group, the nonelecting taxpayer shall be deemed to have elected if the value of the total business assets of the electing taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the nonelecting taxpayer, and its component unitary group, if any. Otherwise, the water's-edge election shall be automatically terminated at the time the electing members become part of the combined report. For purposes of applying paragraphs (9) and (10), the commencement date of the deemed election shall be the same as the commencement date of the electing taxpayers.

(3) If taxpayers filing under water's-edge elections with different commencement dates become members of a new unitary affiliate group, the earliest election date shall be deemed to apply to all electing taxpayers if the total business assets of the earlier electing taxpayer, and

its component unitary group, if any, is larger than the value of the total business assets of the later electing taxpayer, and its component unitary group, if any. Otherwise, the later election commencement date shall apply to all electing taxpayers.

(4) (A) If a taxpayer with an election that has been terminated under paragraph (9) or (10) becomes a member of a new unitary affiliate group that includes another electing or nonelecting taxpayer not affected by those paragraphs, any water's-edge election of the other taxpayer member, if applicable, shall terminate, and any restrictions on making a new water's-edge election, relating to an election terminated under those paragraphs, shall apply to all taxpayer members of the new unitary affiliate group if the total business assets of the taxpayer with the terminated election, and its component unitary group, if any, is larger than the other taxpayer, and its component unitary group, if any. Otherwise, paragraph (2) shall apply, if applicable. If paragraph (2) does not apply, all taxpayer members of the new unitary affiliate group will be treated as nonelecting taxpayers that are not subject to any restrictions on making a new water's-edge election.

(B) If two nonelecting taxpayers with different termination dates under paragraph (9) or (10) become members of a new unitary affiliate group, the earliest termination date shall be deemed to apply to all nonelecting taxpayers, as well as any restrictions on making a new water's-edge election relating to that termination, if the total business assets of the earlier terminating taxpayer, and its component unitary group, if any, is larger than the value of the total business assets of the later terminating taxpayer, and its component unitary group, if any. Otherwise, the later termination date, and the related restrictions on making a new water's-edge election, shall apply to all taxpayer members of the new unitary affiliate group.

(5) (A) Except as provided in subparagraph (B), if one or more electing taxpayers did not report their income and apportionment factors as members of a combined reporting group with one or more nonelecting taxpayers, and, pursuant to a Franchise Tax Board audit determination, the nonelecting taxpayers, are properly in the same combined reporting group as the electing taxpayers, the water's-edge election of the electing taxpayers shall remain in effect and the nonelecting taxpayers shall be deemed to have made a water's-edge election. The commencement date of the deemed water's-edge election shall be the same as the commencement date of the electing taxpayers.

(B) Subparagraph (A) may not apply if the value of total business assets of the electing taxpayers does not exceed the value of total business assets of the nonelecting taxpayers. In that event, the water's-edge election of each electing taxpayer is terminated as of the date the nonelecting taxpayers are, pursuant to the audit determination

described in subparagraph (A), properly included in the same combined reporting group as the electing taxpayers.

(C) For purposes of applying the business asset test of this paragraph, the term ''business assets'' shall have the same meaning as subparagraph (A) of paragraph (6), except that the business assets of other members of the unitary affiliate group that are not taxpayers shall not be taken into account.

(D) Notwithstanding subparagraph (A), nonelecting taxpayers may not be deemed to have made a water's-edge election if the Franchise Tax Board audit determination described in subparagraph (A) is withdrawn or otherwise overturned.

(6) For purposes of paragraphs (2) to (5), inclusive, the following shall apply:

(A) ''Business assets'' are assets, including intangible assets, other than stock of a member of the unitary affiliate group, which are used in the conduct of the business of the unitary affiliate group or would produce business income to the unitary affiliate group, if an election were not in place, if the assets were sold. Business assets shall be valued at net book value.

(B) The phrase ''unitary affiliate group'' refers to all of those corporations that would constitute a unitary group if a water's-edge election were not made.

(C) The phrase ''new unitary affiliate group'' refers to a unitary affiliate group that is created by a new affiliation of two or more corporations, or by the addition of one or more new members to an existing unitary affiliate group.

(D) The phrase ''component unitary group'' means that portion of a group of corporations that have become members of a new unitary affiliate group that were members of their own respective unitary affiliate group prior to entering the new unitary affiliate group, disregarding any corporations that did not become part of the new unitary group.

(7) In the application of paragraphs (2) to (4), inclusive, a series of acquisitions as steps of a single transaction shall be aggregated as a single change of membership.

(8) In the event of a merger or consolidation, the water's-edge status and election commencement date or termination date of the surviving corporation shall be consistent with the result that would have been obtained under paragraphs (2) to (4), inclusive, if the surviving corporation had acquired the stock of the transferor corporation.

(9) A water's-edge election may be terminated without the consent of the Franchise Tax Board after it has been in effect for at least 84 months. The termination shall be made on an original, timely filed return for the first year in which the water's-edge election is to be terminated. To be

effective, the termination shall be made by every taxpayer that is a member of the water's-edge group in the same manner as the election provided under subdivisions (a) and (b).

(10) A water's-edge election may be terminated before the 84-month period described in paragraph (9) has elapsed, but only with the consent of the Franchise Tax Board. A request for termination shall be made at the time and in the manner specified by the Franchise Tax Board.

(A) The request may be granted for good cause. For purposes of this section, good cause shall have the same meaning as specified in Treasury Regulations Section 1.1502-75(c).

(B) The Franchise Tax Board shall consent to a termination requested by all members of a water's-edge group, if the purpose of the request is to permit the state to contract with an expatriate corporation, or its subsidiary, pursuant to paragraph (2) of subdivision (b) of Section 10286 of the Public Contract Code. A water's-edge election terminated pursuant to this subparagraph shall, however, be effective for the year in which the expatriate corporation, or its subsidiary, enters into the contract with the state.

(11) Except for deemed elections as provided in paragraphs (2), (4), and (5), if a water's-edge election is terminated under paragraph (9) or (10), another election may not be made under this section for any taxable year that begins within the 84-month period following the last day of the election period that was terminated. The Franchise Tax Board may waive the application of this prohibition period for good cause.

(12) A water's-edge election shall remain in effect until terminated.

(d) For purposes of this section, the following shall apply:

(1) A ''combined reporting group'' means those corporations whose income and apportionment factors are properly considered pursuant to this chapter in computing the income of the individual taxpayer that is derived from or attributable to sources within this state, taking into account a valid water's-edge election.

(2) A ''group return'' refers to the single return which taxpayer members of a combined reporting group may elect by contract to file, in the form and manner prescribed by the Franchise Tax Board, in lieu of filing their own respective returns.

(3) A ''self-assessed combined reporting group'' means that group of corporations whose income and apportionment factors are reflected in a combined report prepared pursuant to this chapter in a timely filed return, taking into account the effects of a purported water's-edge election, whether or not the membership of the corporations in that combined report was correctly determined.

(e) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section.

(f) To the extent that a taxpayer would have been required to file on a water's-edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to a water's-edge election made in a prior year under Section 25111, the terms of Section 25111 may not apply and the election shall be deemed to have been made under the terms of this section. However, the commencement date of the election made in a prior year under Section 25111 shall continue to be treated as the commencement date of the water's-edge election period for purposes of applying this section.

SEC. 5. It is the sole intent of the Legislature in enacting Section 4 of this act to ensure that essential conforming changes are made with respect to the termination of the water's-edge election of an expatriate corporation, should SB 1061 be enacted to add Section 25113 of the Revenue and Taxation Code with respect to those elections.

SEC. 6. Section 3 of this bill shall not become operative if SB 1061 is enacted and amends Section 25111 of the Revenue and Taxation Code.

SEC. 7. Section 4 of this bill shall only become operative if (1) this bill and SB 1061 are enacted and become effective on or before January 1, 2004, (2) SB 1061 adds Section 25113 to the Revenue and Taxation Code, and (3) this bill is enacted after SB 1061, in which case Section 25113 of the Revenue and Taxation Code, as added by SB 1061, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative.

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 658

An act to add Section 5386.5 to the Public Utilities Code, and to add Section 21100.4 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 5386.5 is added to the Public Utilities Code, to read:

5386.5. No charter-party carrier of passengers shall advertise its services, or in any manner represent its services, as being a taxicab or taxi service. For the purposes of this section, ''advertise'' includes any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, or telephone book listing.

SEC. 2. Section 21100.4 is added to the Vehicle Code, to read:

21100.4. (a) (1) A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, is being operated as a taxicab or other passenger vehicle for hire in violation of licensing requirements adopted by a local authority under subdivision (b) of Section 21100 shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle.

(2) The warrant or court order may be entered into a computerized database.

(3) A vehicle so impounded may be impounded for a period not to exceed 30 days.

(4) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at an address obtained from the department, informing the owner that the vehicle has been impounded and providing the owner with a copy of the warrant or court order. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days impoundment when a legal owner redeems the impounded vehicle.

(b) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(2) No vehicle may be released under this subdivision, except upon presentation of the registered owner's or agent's currently valid license to operate the vehicle under the licensing requirements adopted by the local authority under subdivision (b) of Section 21100, and proof of current vehicle registration, or upon order of the court.

(c) (1) Whenever a vehicle is impounded under this section, the magistrate ordering the storage shall provide the vehicle's registered and

legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(2) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after issuance of the warrant or court order, excluding weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle.

(C) A copy of the warrant or court order and the peace officer's affidavit, as described in subdivision (a).

(D) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

(3) The poststorage hearing shall be conducted within two court days after receipt of the request for the hearing.

(4) At the hearing, the magistrate may order the vehicle released if he or she finds any of the circumstances described in subdivision (b) or (e) that allow release of a vehicle by the impounding agency.

(5) Failure of either the registered or legal owner, or his or her agent, to request, or to attend, a scheduled hearing satisfies the poststorage hearing requirement.

(6) The agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(d) 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.

(e) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the seizure of the vehicle 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 financial interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) (A) The legal owner or the legal owner's agent presents either lawful foreclosure documents or a certificate of repossession and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(B) No administrative costs authorized under subdivision (a) of Section 22850.5 may be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency may not require any documents other than those specified in this paragraph. The impounding agency may not require any documents to be notarized.

(C) As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license, and an operator's license that is in compliance with the licensing requirements adopted by the local authority under subdivision (b) of Section 21100, to the legal owner or the legal owner's agent. The legal

owner or the legal owner's agent shall make every reasonable effort to ensure that the licenses presented are valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

(g) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 and any parking fines, penalties, and administrative fees incurred by the registered owner.

(h) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent if the release complies with this section.

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 659

An act to amend Section 810 of the Business and Professions Code, and to amend Sections 14105.48, 19356, and 19805 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) ''Board,'' as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) ''More than one conviction,'' as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have ''more than one conviction'' for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 1.5. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the

licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) ''Board,'' as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) ''More than one conviction,'' as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or

the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have ''more than one conviction'' for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 2. Section 14105.48 of the Welfare and Institutions Code is amended 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) the manufacturer's suggested retail purchase price reduced by a percentage discount not to exceed 20 percent, 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.

(i) The department may require providers of durable medical equipment to appeal Medicare denials for dually eligible beneficiaries as a condition of Medi-Cal payment.

SEC. 3. 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) Notwithstanding any other provision of law, the department shall suspend, until July 1, 2006, 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. 4. Section 19805 of the Welfare and Institutions Code is amended to read:

19805. (a) The Department of Rehabilitation may advance to an independent living center an amount, each month, not in excess of one-twelfth of the annual allocation for the independent living center.

(b) The Department of Rehabilitation may advance to any contractor or grantee receiving funds pursuant to this chapter an amount, each month, not in excess of one-twelfth of the annual allocation for the contractor or grantee.

(c) To obtain approval by the department for a funding advance pursuant to this section, a grantee of a funding advance shall meet accounting and reporting criteria established by the Department of Rehabilitation.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 810 of the Business and Professions Code proposed by both this bill and SB 359. 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 810 of the Business and Professions Code, and (3) this bill is enacted after SB 359, in which case Section 1 of this bill shall not become operative.

CHAPTER 660

An act to amend Sections 230 and 66271.7 of, and to add Sections 66271.6 and 66271.8 to, the Education Code, relating to sex equity in education.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 230 of the Education Code is amended to read:

230. For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or

other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of these sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of sex.

(c) On the basis of sex, exclusion from participation in, or denial of equivalent opportunity in, athletic programs. For purposes of this subdivision, ''equivalent'' means equal or equal in effect.

(d) An educational institution may be found to have effectively accommodated the interests and abilities in athletics of both sexes within the meaning of Section 4922 of Title 5 of the California Code of Regulations as that section exists on January 1, 2003, using any one of the following tests:

(1) Whether interscholastic level participation opportunities for male and female pupils are provided in numbers substantially proportionate to their respective enrollments.

(2) Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex.

(3) Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a history and continuing practice of program expansion as required in paragraph (2), whether the school district can demonstrate that the interest and abilities of the members of that sex have been fully and effectively accommodated by the present program.

(e) If an educational institution must cut its athletic budget, the educational institution shall do so consistently with its legal obligation to comply with both state and federal gender equity laws.

(f) It is the intent of the Legislature that the three-part test articulated in subdivision (d) be interpreted as it has been in the policies and regulations of the Office of Civil Rights in effect on January 1, 2003.

(g) On the basis of sex, harassment or other discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(h) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

SEC. 2. Section 66271.6 is added to the Education Code, to read:

66271.6. The Legislature finds and declares all of the following:

(a) On June 23, 1972, Congress enacted Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This landmark legislation provides that: ''No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.''

(b) While Title IX applies to all aspects of educational opportunities, it is well-known for opening the door to athletics for girls and women.

(c) In 1975, the United States Department of Health, Education and Welfare enacted regulations requiring that secondary and postsecondary schools comply with Title IX immediately. Those that could show real barriers to immediate compliance had just three years to meet the regulations, including equalizing their athletic programs.

(d) California state law has included several athletic equity provisions similar to those in Title IX since 1976. For example, the Sex Equity in Education Act provides, in subdivision (a) of Section 221.7, that: ''It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.'' Similar provisions are expressly applicable to community colleges and the California State University.

(e) Enhancing athletic opportunities for young women and girls is vitally important because of the significant benefits athletic opportunities provide including greater academic success, better physical and psychological health, responsible social behaviors, and enhanced interpersonal skills. For some women and girls, the financial support made available through athletic scholarships can make it possible to attend college.

(f) Title IX has promoted significant advances for women and girls to participate in sports. While fewer than 32,000 women participated in college sports nationally prior to the enactment of Title IX, today approximately 163,000 women participate—a nearly five fold—or more than 400 percent increase. Athletic opportunities for girls at the high school level nationally have grown even more dramatically—from

294,000 in 1972 to 2,800,000 today—an 894 percent increase. California boasts the second highest number of high school girls participating in athletics nationwide—a total of 270,000 girls in California's high schools now participate in interscholastic athletics.

(g) Men's intercollegiate athletic participation has also increased, rising from approximately 220,000 in 1981–82 to approximately 232,000 in 1998–99. Between 1981–82 and 1998–99, football participation increased by 7,199; men's participation in baseball, lacrosse, and soccer also increased during the same time period. High school boys' participation rates have also increased—jumping 8.2 percent in the last three years in California.

(h) The dramatic increases in participation rates at both the high school and college levels since Title IX was passed show that when doors are opened to women and girls, they will rush through. Courts have repeatedly recognized that it is unfounded and unlawful to claim that women and girls are less interested in sports than men and boys. As one court stated, ''interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience . . .'' (Cohen v. Brown University (1st Cir. 1996) 101 F.3d 155, 179). Accordingly, courts have repeatedly rejected arguments that the assessed interest level of girls in athletics should determine Title IX compliance (Neal v. California State University (9th Cir. 1999) 198 F.3d. 763, 767). Thus, interest surveys cannot accurately determine whether an educational institution has effectively accommodated the interests and abilities of female students.

(i) The United States Department of Education uses a three-part test adopted in 1979 to determine whether an educational institution has met the key Title IX requirement that a school ''effectively accommodate the interests and abilities of members of both sexes'' when it comes to athletic participation. All three prongs of the test have been used successfully by schools to comply with Title IX, and have given schools flexibility in structuring their athletic programs. The three-part test neither imposes quotas or requires preferential treatment, nor requires mirror-image men's and women's sports programs. The lawfulness of the three-part test has been affirmed by every federal appellate court to consider the issue.

(j) Despite major advances in athletic opportunities for females since 1972, discrimination still limits athletic opportunities for girls and women at all educational levels today. For example, although women in Division I colleges are 53 percent of the student body, they receive only 41 percent of the opportunities to play sports, 36 percent of the overall athletic operating budgets, and 32 percent of the dollars spent to recruit new athletes.

(k) In California, the percentage of female athletes at California State University (CSU) campuses actually declined from 36 percent in 1977

to 30 percent in 1990. In 1993, California National Organization for Women (Cal NOW) filed suit against the CSU system alleging violations of California's gender equity in athletics law. Ultimately, CSU and Cal NOW entered into a consent decree focusing on participation, expenditures, and grants-in-aid for women athletes. As a result of the consent decree, women now comprise over 52 percent of CSU athletes, expenditures on women's sports have increased 315 percent in the last 10 years and grants-in-aid for female athletes have increased 232 percent during the same time period.

(*l*) Despite major gains for women under California and federal law, inequities in the treatment of men's and women's and boys' and girls' athletic teams at some educational institutions remain. These inequities include, but are not limited to, all of the following:

(1) Participation rates for women and girls.

(2) Number of sports offered.

(3) Number of levels of teams.

(4) Encouragement by spirit and band groups.

(5) Facilities.

(6) Locker rooms.

(7) Scheduling of games and practice times.

(8) Level of financial support by the district, school, booster club or clubs, and outside sponsors.

(9) Treatment of coaches.

(10) Opportunities to receive coaching and academic tutors.

(11) Travel and per diem allowance.

(12) Medical and training facilities and services.

(13) Housing and dining facilities and services.

(14) Scholarship money.

(15) Publicity.

(m) Educational institutions at all levels are strongly encouraged to take immediate active steps toward full compliance with Title IX and California's gender equity in athletics laws by reviewing all aspects of their athletic program, including those factors listed in subdivision (*l*) where appropriate, to ensure that they are offering male and female student athletes equivalent opportunities to play sports and that they are treating male and female athletes fairly. The need to encourage and increase athletic participation by girls and women is especially strong at educational institutions serving inner-city and urban communities. Full compliance with Title IX is nondiscretionary.

SEC. 3. Section 66271.7 of the Education Code is amended to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 66271.8 is added to the Education Code, to read:

66271.8. (a) The Legislature finds and declares that female students should be accorded opportunities for participation in public postsecondary educational institution athletic programs equivalent to those accorded male students.

(b) In apportioning public funds, public postsecondary educational institutions shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provision of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a public postsecondary educational institution, or any student organization within the postsecondary educational institution that does not provide equivalent opportunity to both sexes for participation and use of facilities. The factors considered when determining whether an educational institution has provided equivalent opportunity include, but are not limited to, all of the following:

(1) Whether the selection of sports and levels of competition offered effectively accommodate the athletic interests and abilities of members of both sexes.

(2) The provision of equipment and supplies.

(3) Scheduling of games and practice times.

(4) Selection of the season for a sport.

(5) Location of the games and practices.

(6) Compensation for coaches.

(7) Travel arrangements.

(8) Per diem.

(9) Locker rooms.
(10) Practice and competitive facilities.
(11) Medical services.
(12) Housing facilities.
(13) Dining facilities.
(14) Scholarships.
(15) Publicity.

(c) Whether a postsecondary educational institution has effectively accommodated the athletic interests and abilities of members of both sexes shall be assessed in any one of the following ways:

(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.

(2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex.

(3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion as required in paragraph (2), whether the institution can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

(d) Nothing in this section shall be construed to invalidate any existing consent decree or any other settlement agreement entered into by an educational institution to address gender equity in athletic programs.

(e) Nothing in this section shall be construed to require a public postsecondary educational institution to require competition between male and female students in school sponsored athletic programs.

(f) If an educational institution must cut its athletic budget, the educational institution shall do so consistently with its legal obligation to comply with both state and federal gender equity laws.

(g) It is the intent of the Legislature that the three-part test articulated in subdivision (c) be interpreted as it has been in the policies and regulations of the Office of Civil Rights in effect on January 1, 2003.

CHAPTER 661

An act to add and repeal Section 2827.10 of the Public Utilities Code, relating to energy resources.

[Approved by Governor October 2, 2003. Filed with
Secretary of State October 3, 2003.]

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

SECTION 1. The Legislature finds and declares that a program to provide net energy metering for generation charges for eligible fuel cell customer-generators is one way to encourage substantial private investment in these energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, and reduce interconnection and administrative costs for electricity suppliers.

SEC. 2. Section 2827.10 is added to the Public Utilities Code, to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) ''Electrical corporation'' means an electrical corporation, as defined in Section 218.

(2) ''Eligible fuel cell electrical generating facility'' means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) ''Eligible fuel cell customer-generator'' means a customer of an electrical corporation that meets all the following criteria:

(A) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(B) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(C) Uses technology that meets the definition of an ''ultra-clean and low-emission distributed generation'' in subdivision (a) of Section 353.2.

(4) ''Net energy metering'' has the same meaning as that term is defined in Section 2827.9.

(b) Every electrical corporation shall, not later than March 1, 2004, file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. The combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state may not exceed 112.5 megawatts.

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical service area, preference shall be given to facilities which, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting the act adding this section, and may not form a part of net energy metering tariffs.

(e) The net metering calculation shall be carried out in accordance with Section 2827.9.

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

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 662

An act to amend Sections 14998.2 and 14998.4 of, to add Sections 14998.11 and 14998.12 to, and to add Chapter 1.4 (commencing with Section 15363.60) to Part 6.7 of Division 3 of Title 2 of, the Government Code, and to add Section 13848.8 to the Penal Code, relating to commissions and committees.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 14998.2 of the Government Code is amended to read:

14998.2. (a) There is in the Business, Transportation, and Housing Agency, the California Film Commission consisting of 26 members. The Governor shall appoint 13 members, the Senate Committee on Rules shall appoint four members, the Speaker of the Assembly shall appoint four members, and five members shall be ex officio. The members of the commission appointed by the Governor may include representatives of state and local government, motion picture development companies, employee and professional organizations composed of persons employed in the motion picture industry, and other appropriate members of this or related industries.

All members of the commission, except legislators who are appointed either by the Senate Committee on Rules or by the Speaker of the Assembly, shall serve at the pleasure of the appointing authority for a term of two years from the effective date of the appointment.

(b) (1) One of the members appointed by the Senate Committee on Rules shall, and another one may, be a Senator and one of the members appointed by the Speaker of the Assembly shall, and another one may, be a Member of the Assembly. These persons shall be appointed for terms of four years.

(2) Of the legislators appointed to the commission, no more than three legislators from the same political party may be appointed to or serve on the commission at the same time.

(c) Any legislator appointed shall serve as a voting member of the commission, and shall meet with, and participate in the activities of, the

commission to the extent that participation is not incompatible with his or her position as a Member of the Legislature, but shall only serve in that capacity while concurrently serving as a Member of the Legislature. Whenever a legislator vacates an office, the appointing power shall appoint another person for a new full term.

(d) Six of the 13 members appointed by the Governor shall be as follows:

(1) One shall be a person who is a member or employee of a union or guild of motion picture artists.

(2) One shall be a person who is a member or employee of a union or guild representing motion picture craftsmen, technicians, or photographers.

(3) Two shall be from major motion picture studios.

(4) One shall be a member of the city council or a member of the county board of supervisors of a city or a county with a population of at least two million people.

(5) One shall be a member of the city council or a member of the county board of supervisors of a city or a county with a population of less than two million people.

(e) The Director of Transportation shall serve as an ex officio nonvoting member.

(f) The Director of Parks and Recreation shall serve as an ex officio nonvoting member.

(g) The Commissioner of the California Highway Patrol shall serve as an ex officio nonvoting member.

(h) The State Fire Marshal shall serve as an ex officio nonvoting member.

(i) The director of the commission shall serve as an ex officio nonvoting member.

SEC. 2. Section 14998.4 of the Government Code is amended to read:

14998.4. (a) The commission shall meet at least quarterly and shall select a chairperson and a vice chairperson from among its members. The vice chairperson shall act as chairperson in the chairperson's absence.

(b) Each commission member shall serve without compensation but shall be reimbursed for traveling outside the county in which he or she resides to attend meetings.

(c) The commission shall work to encourage motion picture and television filming in California and to that end, shall exercise all of the powers provided in this chapter.

(d) The commission shall make recommendations to the Legislature, the Governor, the Business, Transportation and Housing Agency, and other state agencies on legislative or administrative actions that may be

necessary or helpful to maintain and improve the position of the state's motion picture industry in the national and world markets.

(e) In addition, the commission shall do all of the following:

(1) Adopt guidelines for a standardized permit to be used by state agencies and the director.

(2) Approve or modify the marketing and promotion plan developed by the director pursuant to subdivision (d) of Section 14998.9 to promote filmmaking in the state.

(3) Conduct workshops and trade shows.

(4) Provide expertise in promotional activities.

(5) Hold hearings.

(6) Adopt its own operational rules and procedures.

(7) Counsel the Legislature and the Governor on issues relating to the motion picture industry.

SEC. 3. Section 14998.11 is added to the Government Code, to read:

14998.11. The Film Office shall perform the following functions and activities:

(a) Provide staff for the California Film Commission.

(b) Implement the Cooperative Motion Picture Marketing Plan.

(c) Provide services necessary to increase the amount of filming within California.

SEC. 4. Section 14998.12 is added to the Government Code, to read:

14998.12. (a) (1) The California Film Commission shall develop and oversee the implementation of a Cooperative Motion Picture Marketing Plan. The plan shall increase the marketing efforts of the commission, and offer state resources to local film commissions and local government liaisons to the film industry for the purpose of marketing their locales to the motion picture industry.

(2) In addition to paragraph (1), the resources offered under the plan for marketing shall be used to recruit local government participation in, and development of, local film commissions.

(3) For purposes of this section, resources offered to local film commissions and local government liaisons to the motion picture industry shall include all of the following:

(A) Grants for partial or full funding of the cost to develop or participate in workshops, trade shows, seminars, or meetings that assist local governments to promote and market the use of their locales by the motion picture industry. Eligible meetings shall also include those called or approved by the Director of the Film Office to further the purposes of the Cooperative Motion Picture Marketing Plan.

(B) The services of a professional photographer, including material and expenses, to take still photographs of motion picture locations for inclusion in the location resource library established pursuant to subdivision (c) of Section 14998.9. Whenever possible, the

photographer shall be hired from the local area participating in the Cooperative Motion Picture Marketing Plan.

(C) Appropriate promotional and informational materials for the purpose of mailing or distributing to the motion picture industry. The materials shall include, but not be limited to, brochures, print ads, and direct marketing materials which state the benefits and advantages of producing motion pictures within the state or the locales participating in the Cooperative Motion Picture Marketing Plan.

(b) Any resource requested under the provisions of the Cooperative Motion Picture Marketing Plan not specified in this section shall be subject to the approval of the California Film Commission.

(c) The California Film Commission shall expand and upgrade the location resource library through the use of a librarian, a computerized catalog system, and a professional photographer.

(d) As a condition of eligibility for the use of resources pursuant to this section, a local government shall demonstrate substantial compliance with the model process for granting film permits described in Section 14999.20.

(e) The commission shall adopt additional guidelines as needed for the implementation of the plan.

(f) The purpose of the Cooperative Motion Picture Marketing Plan is in no way to discourage, limit, or impede the participation of local governments in the Film Liaisons in California, Statewide, commonly referred to as F.L.I.C.S.

(g) As used in this section, ''motion picture'' shall include, but not be limited to, production in film, video, television, commercial, and still photography.

SEC. 5. Chapter 1.4 (commencing with Section 15363.60) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 1.4. FILM CALIFORNIA FIRST

15363.60. This chapter shall be known and may be cited as the Film California First Program.

15363.61. (a) The Legislature finds and declares as follows:

(1) The entertainment industry is one of California's leading industries in terms of employment and tax revenue.

(2) While film, television, and commercial production in California has expanded over the years, other states and countries actively compete for California production business. It is generally acknowledged that certain segments of the industry, mainly film and television production, are especially hard hit in California. The Legislature finds that this is due to assertive efforts of other states and countries, offering various incentives for filming outside of California. As a result of increased

marketing efforts by other states and countries, unemployment in certain film industry sectors and a reduction of film business has occurred within California.

(3) Recognizing the vital role the entertainment industry plays in California's economy, legislation enacted in 1985 created the California Film Commission within the Business, Transportation and Housing Agency to facilitate, retain, and attract filming in California.

(4) In order to stop the decline of California film production, it is necessary and appropriate to assist in the underwriting of actual costs incurred by production companies to film in California and to provide opportunities for production companies and other film industry companies to lease property owned by the State of California at below market rates.

(5) Providing the funds designated under this program, and leasing property owned by the State of California at below market rates is in the public interest and serves a public purpose, and providing incentives to production companies and other film industry companies will promote the prosperity, health, safety, and welfare of the citizens of the State of California.

(b) It is the intent of the Legislature that, commencing with the 2002–03 fiscal year, funding for the program from the General Fund shall not exceed the General Fund funding level for the prior fiscal year.

15363.62. For purposes of this chapter, the following meanings shall apply:

(a) ''Agency'' means the Business, Transportation and Housing Agency, which includes the California Film Commission.

(b) ''Film'' means any commercial production for motion picture, television, commercial, or still photography.

(c) ''Film costs'' means the usual and customary charges by a public agency connected with the production of a film, limited to any of the following:

(1) State employee costs.

(2) Federal employee costs.

(3) Federal, state, University of California, and California State University permits and rental costs.

(4) Local public entity employee costs.

(5) Local property use fees.

(6) Rental costs for equipment owned and operated by a public agency in connection with the film.

(d) ''Fund'' means the Film California First Fund, established pursuant to Section 15363.74.

(e) ''Production company'' means a company, partnership, or corporation, engaged in the production of film.

(f) ''Program'' means the Film California First Program established pursuant to this chapter.

(g) ''Public agency'' means any of the following:

(1) The State of California, and any of its agencies, departments, boards, or commissions.

(2) The federal government, and any of its agencies, departments, boards, or commissions.

(3) The University of California.

(4) The California State University.

(5) California local public entities.

(6) Any nonprofit corporation acting as an agent for the recovery of costs incurred by any of the entities listed in this subdivision.

15363.63. (a) (1) Except as provided in paragraph (2), the Business, Transportation and Housing Agency may pay and reimburse the film costs incurred by a public agency, subject to an audit. The director of the commission shall develop alternate procedures for the reimbursement of public agency costs incurred by the production company. The Business, Transportation and Housing Agency shall only reimburse actual costs incurred and may not reimburse for duplicative costs.

(2) Notwithstanding paragraph (1), the Business, Transportation and Housing Agency shall not reimburse costs at rates exceeding those in effect as of January 1, 2002.

(b) Notwithstanding any other provision of law, the Controller shall pay any program invoice received from the agency that contains documentation detailing the film costs, and if the party requesting payment or reimbursement is a public agency, a certification that the invoice is not duplicative cost recovery, and an agreement by the public agency that the Business, Transportation and Housing Agency may audit the public agency for invoice compliance with the program requirements.

(c) (1) Not more than three hundred thousand dollars ($300,000) shall be expended to pay or reimburse costs incurred on any one film.

(2) In developing the procedures and guidelines for the program, the commission may, in consultation with interested public agencies, establish limits on per day film costs that the state will reimburse. A consultation and comment period shall begin on January 1, 2001, and shall end 30 days thereafter.

(d) (1) Upon receipt of all necessary film costs documentation from a public agency, the Business, Transportation and Housing Agency shall transmit the appropriate information to the Controller for payment of the film costs within 30 days.

(2) Public agencies shall be entitled to reimbursement for certain administrative costs, to be determined by the director of the commission,

incurred while participating in the program. The reimbursement for administrative costs shall not exceed 1 percent of the total amount of the invoices submitted. Reimbursement shall have an annual cap imposed of not more than ten thousand dollars ($10,000) per public agency participating in the program. Contracted agents working on behalf of two or more public agencies shall have a cap of not more than twenty thousand dollars ($20,000) annually.

(e) The commission shall prepare annual preliminary reports to be submitted to the Joint Legislative Budget Committee in regard to the program prior to the adoption of the annual Budget Act. The reports shall include a list of all entities that received funds from the program, the amounts they received, and the public services that were reimbursed. The commission shall prepare and submit a final report to the committee no later than January 1, 2004.

(f) The commission shall, in consultation with the Department of Industrial Relations and the Employment Development Department, contract with an independent audit firm or qualified academic expert, to prepare a report to be submitted to the Joint Legislative Budget Committee no later than January 1, 2004, that identifies the beneficiaries of expenditures from the Film California First Fund, and determines the impact of these expenditures on job retention and job creation in California.

15363.64. (a) The Film California First Fund is hereby established in the State Treasury.

(b) The following moneys shall be paid into the fund:

(1) Any moneys appropriated and made available by the Legislature for the purposes of this chapter.

(2) Any other moneys that may be made available to the agency for the purpose of this chapter from any other source, including the return from investments of moneys by the Treasurer.

15363.65. Procedures and guidelines promulgated to clarify and make specific provisions of the program established pursuant to this chapter, or of any other film assistance program within the agency, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 for a period of 36 months after the effective date of this chapter. Following the 36-month exemption, the commission may adopt regulations concerning the implementation of this chapter as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. The adoption of these regulations is an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare within the meaning of subdivision (b) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect for more than 180 days unless the commission complies with all provisions of Chapter

3.5 (commencing with Section 11340) of Part 1, as required by subdivision (e) of Section 11346.1.

SEC. 6. Section 13848.8 is added to the Penal Code, to read:

13848.8. (a) The executive director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall also appoint the following members to the High Technology Crime Advisory Committee established by Section 13848.6:

(1) A designee of the Recording Association of America.

(2) A designee of the Consumers Union.

(b) The High Technology Crime Advisory Committee, in formulating a comprehensive written strategy for addressing high technology crime throughout the state, shall identify, in addition to the various priorities for law enforcement attention specified in subdivision (b) of Section 13848.6, the goal of apprehending and prosecuting criminal organizations, networks, and groups of individuals engaged in the following activities:

(1) Violations of Sections 653h, 653s, and 635w.

(2) The creation and distribution of pirated sound recordings or audiovisual works or the failure to disclose the origin of a recording or audiovisual work.

CHAPTER 663

An act to amend Section 8702 of, and to add and repeal Article 6 (commencing with Section 8780) of Chapter 4 of Part 6 of, the Education Code, relating to instructional programs.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 8702 of the Education Code is amended to read:

8702. The Legislature further finds and declares that an educational program is needed that is designed to build necessary attitudes of stewardship toward the maintenance of the quality of our common environment and to enable all citizens to use wisely, and not destructively, the resources at their disposal. These attitudes are best developed at an early age through programs that encourage personal responsibility and participation in the local community.

SEC. 2. Article 6 (commencing with Section 8780) is added to Chapter 4 of Part 6 of the Education Code, to read:

Article 6. Outdoor Environmental Education Program

8780. There is hereby established the Outdoor Environmental Education Program for the purpose of fostering stewardship of the environment and an appreciation of the importance of the wise use of natural resources, and showcasing the diversity of programs that fulfill that purpose.

8781. (a) The State Department of Education shall administer the program and shall select diverse entities to implement the program according to a priority scoring system based on the eligibility requirements enumerated in subdivision (b), upon application.

(b) In order to be eligible, applicants shall do all of the following:

(1) Serve primarily at-risk youth and underserved demographic groups.

(2) Encourage collaboration with other entities in the provision of services.

(3) Serve a minimum adequate number of participants.

(4) Commit a minimum adequate amount of resources to the program.

(5) Promote outdoor educational activities.

(6) Provide a curriculum that fosters stewardship of the environment and an appreciation of the importance of the wise use of natural resources.

(7) Include service-learning and community outreach components for the purpose of building partnerships between participants and local communities.

8782. The State Department of Education shall contract with an independent evaluator to evaluate the program and submit a report to the Legislature on its findings and recommendations no later than February 1, 2005.

8783. This article shall be implemented only if the Department of Finance determines that private donations sufficient to fund the program and its evaluation have been deposited with the State Department of Education. The Department of Finance shall report its findings to the Chief Clerk of the Assembly.

8784. This article 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.

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